



JAN 14 2020

State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

RECEIVED
MAIL ROOM

JAN 17 2020

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

STEFANIE A. BRAND
Director

January 8, 2020

Via UPS Overnight Delivery and Electronic Mail

Honorable Jacob S. Gertsman, ALJ
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
3444 Quakerbridge Road
Mercerville, New Jersey 08619

**Re: In the Matter of the Petition of New Jersey-American Water
Company Inc. for Approval of Increased Tariff Rates and Charges
for Water and Wastewater Service, Changes in Depreciation Rates
and Other Tariff Modifications
BPU Docket No.: WR17090985
OAL Docket No.: PUC 16279-2018S**

Dear Judge Gertsman:

On behalf of the Division of Rate Counsel ("Rate Counsel"), please accept this letter brief in lieu of a more formal brief on the limited issue of acquisition adjustments proposed by New Jersey American Water Company ("NJAWC" or "Company") in connection with the base rate case referenced above.

PROCEDURAL HISTORY AND BACKGROUND

On September 14, 2017, NJAWC filed with the New Jersey Board of Public Utilities ("Board") a petition, testimony and exhibits (collectively, "Petition") requesting an increase in operating revenues of \$129.3 million, or approximately 17.54% over projected pro-forma

Tel: (609) 984-1460 • Fax: (609) 292-2923 • Fax: (609) 292-4991
<http://www.nj.gov/rpa> E-Mail: njratepayer@rpa.nj.gov

rate revenues.

NJAWC serves approximately 631,000 water and fire service customers and approximately 41,000 sewer service customers. The Company proposed that the increase become effective on October 15, 2017.¹ In the Petition, NJAWC proposed a test-year ending March 31, 2018. The Petition as originally filed was based upon five months of actual and seven months of estimated data. On January 15, 2018, NJAWC filed an update based on nine months actual and three months estimated data. NJAWC filed an additional update on April 23, 2018 based on 12 months actual data. Both updates included supplemental testimony.

On September 27, 2017, the Board transmitted this matter to the Office of Administrative Law ("OAL") as a contested case and on October 20, 2017, the Board issued an Order suspending NJAWC's proposed rate increase until February 15, 2018. By a second suspension order dated January 31, 2018, the proposed rate increase was suspended until June 15, 2018. This matter was assigned to Administrative Law Judge ("ALJ") Jacob S. Gertsman, who issued a Prehearing Order on December 18, 2017, establishing procedures and hearing dates for the conduct of this case. ALJ Gertsman issued an Order Establishing Revised Prehearing Submission Deadlines on May 23, 2018.

Motions to intervene were filed by the following parties (collectively, "Intervenors") and were unopposed: Rutgers, the State University ("Rutgers"), Princeton University, Phillips 66 Company, Johanna Foods, Inc., and Cogen Technologies Linden Venture, L.P. (collectively, "OIW"); Middlesex Water Company ("Middlesex"); Mount Laurel Township Municipal Utilities

¹ On September 22, 2018, the Company filed a letter with the Board via electronic mail stating that it would not implement rates on an interim basis prior to the effective date of the Board's suspension Order resulting from the Board's October 20, 2017 agenda meeting. However, the Company stated that it did not waive its "right to implement the proposed rates at the conclusion of the eight month suspension period on June 15, 2018 should the Board not issue a final Decision and Order by that date."

Authority ("Mount Laurel"); Aqua New Jersey, Inc. ("Aqua"); and City of Elizabeth. The motions to intervene filed by the OIW, with the exception of Rutgers, Middlesex, Aqua, and the City of Elizabeth, were granted by Orders dated December 18, 2017, which were subsequently amended on January 16, 2018. Rutgers and Mount Laurel were granted intervenor status by Orders dated January 16, 2018 and February 28, 2018, respectively. On May 31, 2018, AARP filed a motion to participate, which was unopposed. ALJ Gertsman granted AARP leave to participate on June 8, 2018. On July 2, 2018, the New Jersey Utility Shareholders Association ("NJUSA") filed a motion to participate. On August 1, 2018, ALJ Gertsman entered an Order granting NJUSA's motion to participate, which Order was amended on August 3, 2018 to correct a typographical error.

After proper notice to the general public and affected municipalities and counties within NJAWC's service area, four public hearings were held. One public hearing was held on January 8, 2018 in Westfield, New Jersey; two public hearings were held on January 10, 2018 at 1:00 p.m. in Ocean City, New Jersey and at 6:00 p.m. in Howell Township, New Jersey; and one public hearing was held on January 16, 2018 in Haddonfield, New Jersey. A representative of NJUSA attended the hearing in Haddonfield and entered a statement on the record that requested that the process for granting NJAWC new rates be fair and balanced, taking into account the interests of New Jersey utility shareholders and ratepayers. Members of the public also attended and spoke at the Howell Township hearing in general opposition to the proposed rate increase. No members of the public attended the Westfield or Ocean City hearings. In addition, the Board received over 100 written comments in opposition to the Petition.

On February 8, 2018, NJAWC filed supplemental direct testimony related to the Tax Cuts and Jobs Act of 2017. On April 13, 2018, Rate Counsel and certain Intervenors filed direct

testimony and on May 11, 2018, NJAWC filed rebuttal testimony. Evidentiary hearings took place on June 11, 13, 14, 18 and 25, 2018. Prior to the June 15, 2018 expiration of the second suspension period, NJAWC provided notice that it would implement interim rates. On May 18, 2018, Rate Counsel filed a motion requesting the Board issue an Order rejecting the Company's proposed provisional Rates. The motion was opposed by the Company. The Board issued an Order denying Rate Counsel's request on June 22, 2018. The Company implemented interim rates that included a \$75 million increase, effective June 15, 2018, in accordance with N.J.A.C. 14:1-5.12(f). This resulted in a 12.323% increase applied equally to all rate classes using the existing rate design for the utility approved by the Board, pursuant to N.J.A.C. 14:1-5.12(e)(2).

On July 3, 2018, Rate Counsel submitted a letter to ALJ Gertsman alerting him of a report that the Staff of the New York Public Service Commission ("PSC"), Department of Public Service ("DPS") had issued ("Staff Report") regarding certain oral testimony and discovery responses that employees of American Water Works Service Company, Inc. ("Service Company") submitted to the PSC in connection with the base rate case of New York-American Water Company, Inc. ("NYAWC"). One implicated Service Company employee had submitted pre-filed testimony, answered discovery, and testified at the evidentiary hearings in this case. Another had submitted pre-filed testimony and answered discovery, and his pre-filed testimony was adopted by a different witness in this case. Both such employees separated from the Service Company before the conclusion of the evidentiary hearings here. In its letter, Rate Counsel requested that, as a result of the Staff Report, ALJ Gertsman order NJAWC to review the testimonies of the two witnesses and provide a certification that their testimonies were complete and free of errors or omissions. Board Staff sent a separate letter on July 10, 2018 requesting that ALJ Gertsman order NJAWC to verify all testimony and discovery responses submitted in

evidence in this case (collectively, Board Staff and Rate Counsel letters are referenced as "Letters").

On July 25, 2018, the Board held its regularly scheduled Board meeting at which time it ordered NJAWC to conduct an independent certification of the numbers that NJAWC had submitted in support of its Petition.

ALJ Gertsman held a limited-purpose hearing on August 1, 2018 regarding the issues raised by Rate Counsel and Board Staff in the Letters. At the August 1, 2018 hearing, NJAWC moved additional exhibits into evidence, including a certification of the accuracy of the record by NJAWC President Deborah A. Degillio, which appended supporting certifications. Ms. Degillio also provided direct testimony and was cross-examined. Thereafter, NJAWC retained its auditor, PriceWaterhouse Coopers ("PwC"), to perform an Agreed Upon Procedures Engagement regarding the Schedules, applicable SIRs, and utility plant asset records in Power Plant for the Haddonfield and Shorelands acquisitions for which NJAWC requested recognition in connection with the Petition. PwC subsequently agreed to include in its engagement those discovery responses received in evidence in this proceeding. PwC agreed to reconcile all of these items to NJAWC's general ledger to the extent applicable. It also determined the extent to which NJAWC's proposed post-test year plant additions were recorded on NJAWC's books and records. As to Haddonfield and Shorelands, PwC agreed to verify that correct amounts were transferred when entered into NJAWC's books and records. On August 31, 2018, PwC issued a Report of Independent Accountants, which was subsequently admitted into the record.

After discovery and comprehensive settlement discussions, on October 16, 2018, the Company, Board Staff, Rate Counsel, and OIW (collectively, "Parties") reached a stipulation of settlement with regard to all issues in the base rate case except the issue of plant acquisition adjustments ("Partial Stipulation"). On October 18, 2018, ALJ Gertsman issued an Order to Bifurcate Partial Initial Decision Settlement ("Initial Decision") in this matter, recommending adoption of the Partial Stipulation executed by the Parties, finding that the Parties had voluntarily agreed to the Partial Stipulation and that the Partial Stipulation fully disposed of all issues, except for the acquisition adjustment. On October 29, 2018 the Board issued an Order adopting the Order to Bifurcate Partial Initial Decision Settlement and Remand the Proposed Plant Acquisition Adjustment Issues ("Order"). On November 8, 2018, the Board transmitted the previously bifurcated issue of plant acquisition adjustments back to the OAL, over which ALJ Gertsman was again assigned to preside.

ALJ Gertsman established a briefing schedule for the acquisition adjustment issue. Rate Counsel, Board Staff, the Company, and Middlesex submitted initial briefs on the limited issue of acquisition adjustments on January 18, 2019, with reply briefs being filed on February 25, 2019. On May 6, 2019, the Company filed a Motion to Admit Supplemental Testimony and Schedule of John S. Tomac Into Evidence. The Motion pertained to previously filed testimony and briefing on the issue of whether the acquisition adjustments for Shorelands and Haddonfield can be paid for solely by rates collected from those customers, or whether other Company ratepayers would be subsidizing the adjustments. Rate Counsel filed a reply to this motion accompanied by supplemental testimony of Howard Woods on May 31, 2019. Oral argument on the acquisition adjustment issue was held before ALJ Gertsman on November 21, 2019.

Rate Counsel submits this summary brief in accordance with the procedural schedule in this matter.

ARGUMENT

The Requested Adjustments For the Shorelands Water and Haddonfield Acquisitions Should Be Denied As the Company Has Failed to Demonstrate Net Benefits to Ratepayers From the Acquisitions.

1. Board Policy Confines Acquisition Adjustments to the Limited Circumstances Where A Utility Has Shown Tangible Benefits to Existing Ratepayers or Has Acquired a Distressed System That Cannot Provide Safe, Adequate & Proper Service to Ratepayers.

Normally, when a utility acquires another system, it receives a return in rates based on the acquired system's book value, which represents the original cost of the system's assets less accumulated depreciation. Acquisition adjustments, if permitted, allow for rate recovery of the full amount that a utility chose to pay to acquire a system, which is almost always in excess of that system's current book value.

The Board's policy regarding acquisition adjustments was set forth in I/M/O Petition of Elizabethtown Water Co. For an Increase in Rates, BPU Docket No. 8312-1072, 62 P.U.R. 4th 613 (N.J.B.P.U. 1984) ("Elizabethtown Acquisition Order"). In that case, the Board found that an acquisition adjustment is appropriate only when a utility can demonstrate specific benefits to existing customers, finding that "[w]e will continue to recognize the appropriateness of acquisition adjustments where a specific benefit can be shown, such as the acquiring of needed facilities which benefit the entire system." Id. at 614. In denying the acquisition of the Peapack and Gladstone Water System in that case, the Board accepted the analysis of the ALJ, whose Initial Decision found that "existing customers received no benefit from the Peapack-Gladstone acquisition...petitioner offered no evidence as to why existing ratepayers should bear the cost associated with a purchase that may be in the public interest, but does not particularly aid

existing customers of the system.” 11 N.J.A.R. 303, 313-14. The Board also noted an additional circumstance where acquisition adjustments may be appropriate, which was a utility’s acquisition of a troubled small water company. The Board made it clear that its policy was limited to distressed systems that are “hard-pressed to provide safe, adequate and proper service” consistent with “the intent of the Small Water Company Takeover Act, N.J.S.A. 58:11-59 et seq.”

The Board affirmed its policy on acquisition adjustments in I/M/O Petition of South Jersey Gas Co. For Approval of Increased Base Tariff Rates & Charges, BPU Docket No. 843-184, Order dated 12/30/85 (“South Jersey Gas Order”). In that matter, South Jersey Gas Company sought an acquisition adjustment for its purchase of the Cape May portion of its system from New Jersey Natural Gas Company. Noting that “[t]he Board’s policy on this issue was clearly set forth in [the Elizabethtown Acquisition Order],” the Board reiterated that acquisition adjustments would be recognized “only where it was proven that a specific and tangible benefit inured to ratepayers from the acquisition.” South Jersey Gas Order at 4. The Board made it clear that benefits must inure to ratepayers of the existing system, noting that “[i]n his Initial Decision, Judge Sullivan properly recognized the Board’s policy in this area and correctly rejected the Company’s position that the Board should look to both utilities and their ratepayers in determining if any benefits were created by the transaction.” Id. In denying the requested acquisition adjustment, the Board found that “the Company bears the burden of proof with regard to any benefits from its acquisition” and “the Company failed to carry its burden of proof as to whether any specific and tangible benefits resulted from its acquisition from New Jersey Natural.” Id.

Good public policy dictates that acquisition adjustments be limited to the narrow circumstances outlined in the Board's policy. Allowing the Company to receive acquisition adjustments in this matter above the system's current book value would send a signal to both sellers and purchasers regarding future acquisitions. Acquisition adjustments are an exception to the rule that utilities can only recover a rate of return on the book value of their assets. Without any tie to the book value of the system, water utilities could purchase systems at any inflated price, knowing that they will recover any excess costs from ratepayers. This will almost certainly raise the future purchase price of acquisitions, as the seller will know there is little to no ceiling on cost and the purchaser can increase their earnings by overpaying for a system. For this reason, acquisition adjustments must only be granted in very limited circumstances, such as those outlined in the Board's acquisition adjustment policy.

2. The Company Does Not Claim That Either Haddonfield or Shorelands Was a Troubled Utility When Acquired.

The Company has never asserted that Shorelands was a troubled utility when acquired by the Company. Furthermore, during oral argument on November 21, 2019, the Company clarified its position regarding the issue of whether Haddonfield was a troubled utility at the time of its acquisition. Specifically, the Company no longer asserts that Haddonfield was troubled at the time of its acquisition, nor is it seeking rate recognition of the proposed acquisition adjustment on these grounds ("New Jersey American is not claiming that the acquisition adjustment should be recognized because the entities were either small or troubled.") 33T:L11-14 (11/21/19).

3. The Company Has Failed to Demonstrate Net Benefits to Existing Ratepayers From the Shorelands Acquisition.

The Company is seeking an acquisition adjustment for the approximately \$26.9 million over book value it paid to acquire the Shorelands Water Company. RC-30. As explained below,

the Company has failed to carry its burden of proving that its existing ratepayers should pay for the Company's decision to pay such a substantial sum for Shorelands. First, it is important to note that the decision to acquire Shorelands was made purely by the Company and its Board of Directors. Ratepayers had no say in whether to acquire Shorelands, or in the Company's decision to pay \$26.9 million in excess of book value for the system. The Company has a heavy burden to prove that its ratepayers should now pay a return on and a return of this \$26.9 million premium, and it is a burden that the Company has failed to meet.

The Company offered an analysis attempting to show that the alleged benefits of the acquisition outweigh the cost of the acquisition adjustment. The Company claims that it will avoid \$29 million of planned capital costs and defer an additional \$18.9 million of capital costs for a period of 5-10 years. *P-8* at 38. The Company asserts a net present value benefit of \$6.6 million as a result of the acquisition. *Id.* at 39.

There are a number of reasons why the Company failed to meet its burden of proving net benefits to existing ratepayers. First, the alleged benefits of the acquisition are based solely on the Company's claims that it will avoid spending on certain capital projects. *RC-1* at 31. Although the Company claims that it will avoid certain capital costs, it has never committed to doing so. Absent a commitment, there is no guarantee that these capital costs will actually be avoided, or result in lower rates for ratepayers.

Secondly, the net benefits analysis is speculative and cannot meet the Company's burden of proof. For example, the Company claims that due to its acquisition of Shorelands, it can avoid the cost of rebuilding the Englishtown Wells and delay the construction of the ASR Wells for five years. These wells are designed to help alleviate capacity issues in the Coastal North System. The flaw in this claim is that the Company admits in its testimony that the Company

has capacity issues in its Coastal North System that encompasses Shorelands. P-5 at 14.

Company witness Donald Shields testified that “[t]he Coastal North System has a reliable maximum day supply deficit.” Id. This means that the Company struggles to meet water demand in this area on its maximum demand days. Furthermore, the Coastal North System is and will continue to be a high growth area. All of these factors add up to speculation when the Company claims that it can avoid and/or defer well construction. Speculation cannot satisfy the Company’s burden of proof here.

Furthermore, as Mr. Woods testified, the Company’s net benefits analysis contains certain assumptions that may not be realistic, and absent such assumptions, the Shorelands acquisition ends up as a net liability to existing ratepayers. One example of a flawed assumption in the Company’s analysis relates to its Navy Tank. *RC-1* at 32-35. The Navy Tank is a 1.2 million gallon standpipe with operating range between 240 feet and 278 feet. Id. at 32. Replacement of the Navy Tank is one of the avoided projects under the Company’s analysis, with an avoided cost of \$3,700,000. *P-8*, Schedule FXS-1. The Company’s analysis assumes that the Navy tank will remain in service for the next forty years, without needing replacement during that time. *RC-1* at 33. The flaw in the Company’s analysis is that the Navy Tank was built in 1951, and is already 67 years old. Id. at 34. In other words, the Company’s analysis assumes the Navy Tank will continue in service until it is 107 years old, despite its current depreciation rate of only 72 years. Id. Mr. Woods’ testimony illustrates the sensitivity of the analysis offered by the Company simply by examining its assumption about the Navy Tank. As Mr. Woods demonstrated, if the Navy Tank needs to be replaced in 2023 – the end of its 72 year depreciation life – then the Shorelands acquisition transforms from an acquisition with a \$6.6 million net benefit to ratepayers under the Company’s analysis, to a \$197,000 net cost to

ratepayers. *RC-1* at 35. Simply with one reasonable change to the Company's analysis, Mr. Woods demonstrated that the Company's claim of net benefits from the Shorelands acquisition does not stand scrutiny.² The Company's analysis is based upon hopeful, speculative assumptions. If any of those assumptions prove inaccurate, the result of the cost benefit analysis changes dramatically. An analysis built on such speculative assumptions cannot sustain the Company's burden of proof.

Furthermore, as Mr. Woods testified, unless the Company's overall capital spending is somehow capped, there is no guarantee that ratepayers will actually experience lower rates, even if the capital projects contained in the analysis remain avoided. *RC-1* at 37. Indeed, the Company has never claimed that its capital spending will be reduced as a result of acquiring Shorelands. The Company has aggressively invested in new plant in its service territory, in the amount of \$868 million since its last rate case only three years ago. *Id.* As Mr. Woods testified, absent a cap it is likely that any avoided costs will simply shift dollars elsewhere, with ratepayers being asked to pay for both the acquisition premium and the new investment. *Id.* Without seeing any relief in rates, customers will hardly experience a benefit from these alleged avoided projects.

Finally, the Company's analysis ignores certain costs related to the Shorelands acquisition. The analysis does not consider the cost of any internal improvements that will need to be made to the Shorelands system over time, nor does it consider any of the capital integration costs necessary to integrate Shorelands with the existing New Jersey American system. *Id.*

² Mr. Woods also examined other projects that the Company claimed could be avoided or deferred, such as the storm protection project for the Newman Springs Clearwell. *RC-1* at 35. Mr. Woods testified that if the Company finds the Newman Springs Clearwell and the Englishtown Wells must be built as planned, and not delayed, then together with the Navy Tank construction the Shorelands acquisition would result in a net present cost to ratepayers of approximately \$25.5 million. *Id.* at 36.

Since these are costs that never would have been incurred absent the Company's acquisition of Shorelands, the Company should have included them in its analysis of whether the acquisition produced net benefits to existing ratepayers. The Company did not, and for this and all the other reasons noted above, failed to meet its burden of proving that it should receive an acquisition adjustment for the Shorelands system. Accordingly, the Company's request for an acquisition premium in excess of Shorelands' book value should be denied.

4. Haddonfield Was Not a Troubled Utility, Nor Did Its Acquisition Benefit Existing New Jersey American Ratepayers. Accordingly, Per Board Policy the Proposed Acquisition Adjustment for Haddonfield Should Be Denied.

The Company is seeking an acquisition adjustment of \$1,588,911 for the Haddonfield system.³ *RC-1*, Schedule HJW-10. The Board's policy, as set forth in the Elizabethtown Acquisition Order, requires that a utility demonstrate a specific benefit to existing customers from an acquisition in order for an acquired system to be eligible for an acquisition adjustment. The Company has failed to meet its burden in this case of showing that the Haddonfield acquisition benefited existing customers. The Company asserts various benefits such as the decommissioning of Haddonfield's Centre Street water treatment plant and Haddonfield's Cottage Avenue Standpipe. *P-24* at 4-5. However, as Mr. Woods testified, these asserted benefits inure only to Haddonfield customers, not other New Jersey American ratepayers as is a pre-requisite to receiving an acquisition adjustment under the Elizabethtown Acquisition Order. *RC-1* at 23.

The Company does assert one benefit to existing ratepayers from the Haddonfield acquisition, the Haddonfield water allocation permit. *Id.* at 6. Through the testimony of Mr.

³ This amount reflects the difference in the purchase price of \$28.5 Million and the value of the Haddonfield system of \$26,911,089 contained in the testimony of Stephanie Cuthbert, *P-36* at 10.

Shields, the Company claims that this allocation will be useful in addressing water quality requirements associated with perfluorinated compounds (PFCs). *P-7* at 18. However, Mr. Woods successfully rebutted Mr. Shields' testimony. As Mr. Woods testified, "three years after the acquisition of the Haddonfield system, [the Company] still cannot quantify the impact of these groundwater quality issues or the impact that the Haddonfield acquisition may or may not have on the solution to these problems." *RC-84* at 3. When asked in discovery to quantify the impact of the Haddonfield acquisition on the Company's ability to address the new PFC standards, the Company could not answer, instead stating that it "is still evaluating the overall impact of the new PFC standards on the company wells and does not have an overall impact developed at this time." *RC-18, RC-19*. The Company bears the burden of proving any alleged benefits to existing ratepayers from the Haddonfield acquisition. Since the Company could not quantify the impact that the Haddonfield acquisition had on its ability to address PFCs, the Company failed to meet this burden of proof, and per Board policy its request for an acquisition adjustment for Haddonfield should be denied.

Additionally, while the Board has occasionally granted acquisition adjustments for acquisitions of utilities that cannot provide safe, adequate and proper utility service to customers, the Company no longer asserts that Haddonfield was troubled at the time of its acquisition, nor is it seeking rate recognition on the grounds that Haddonfield is a troubled system. 33T:L10-14 (11/21/19).

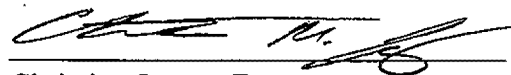
CONCLUSION

For the reasons stated above, Rate Counsel respectfully requests Your Honor issue an Initial Decision recommending that the Board deny the acquisition adjustments proposed by the Company.

Respectfully submitted,

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By:



Christine Juarez, Esq.
Assistant Deputy Rate Counsel

c: OAL Service List (via UPS Overnight Mail)
BPU Service List (Electronic and USPS Regular Mail)

**In the Matter of the Petition of
New Jersey American Water Co.
Inc. for Approval of Increased
Tariff Rates and Charges for
Water and Wastewater Service,
Change in Depreciation Rates and
Other Tariff Modifications**

SERVICE LIST

BPU DOCKET NO.: WR17090985

Stefanie A. Brand, Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Michael Kammer, Director
Board of Public Utilities
Division of Water
44 South Clinton Ave. – Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

Andrew Kuntz, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Brian Lipman, Esquire
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Jason Andersen
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Meagan Lupo
Board of Public Utilities
44 South Clinton Ave.
P.O. Box 350
Trenton, New Jersey 08625-0350

Debra F. Robinson, Esquire
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Dr. Ben Witherell, Chief Economist
Board of Public Utilities
44 South Clinton Avenue, Suite 314
P.O. Box 350
Trenton, NJ 08625

Emma Xiao, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Susan McClure, Esquire
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Dr. Son-Lin Lai
Office of the Economist
44 South Clinton Ae.
P.O. Box 350
Trenton, NJ 08625

Alex Moreau, DAG
Division of Law & Public Safety
R.J. Hughes Justice Complex
25 Market Street P. O. Box 112
Trenton, NJ 086225

Christine Juarez, Esquire
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

John Tomac
Director of Rates & Regulations
New Jersey American Water
1025 Laurel Oak Road
Voorhees, NJ 08043

Dante DeStefano
New Jersey American Water
1025 Laurel Oak Road
Voorhees, NJ 08043

Marylin Silva, Legal Assistant
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, NJ 08625

Suzana Duby, Esquire
New Jersey American Water
167 John F. Kennedy Parkway
Short Hills, NJ 07078

Christine Soares, Esquire
Cozen O'Connor
457 Haddonfield Road
Cherry Hill, New Jersey 08002

Ira G. Megdal, Esquire
Cazen O'Connor
457 Haddonfield Road
Cherry Hill, New Jersey 08002

A. Bruce O'Connor
Vice President, Treasurer & Chief
Financial Officer
Middlesex Water Company
1500 Ronson Road
Iselin, NJ 08830

Jay L. Kooper
Vice President, General Counsel &
Secretary
Middlesex Water Company
485C Route One South, Suite 440
Iselin, NJ 08830

Justin Cederberg
14 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Howard J. Woods, Jr., P.E.
Howard J. Woods, Jr.
& Associates LLC
49 Overhill Road
East Brunswick, NJ 08816

Robert J. Henkes
Henkes Consulting
7 Sunset Road
Old Greenwich, CT 06870

Donna Thomas-Lee
Bureau of Case Management
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Ave.
P.O. Box 350
Trenton, NJ 08625

Patricia A. Krogman
Patricia.Krogman@dol.lps.state.nj.us
e-mail only

Kyle Felton
Kyle.Felton@bpu.nj.gov
e-mail only

Anthony Visco
Anthony.Visco@bpu.nj.gov
e-mail only

Kofi Ocansey
Kofi.Ocansey@bpu.nj.com
e-mail only

Magdy Mekhaeil
Magdy.Mekhaeil@bpu.nj.gov
e-mail only



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
P.O. Box 049
Trenton, NJ 08625-0049

SERVICE LIST
OAL DOCKET NO. PUC 16279-2018 S

Donna Lee-Thomas
Bureau of Case Management
Board of Public Utilities
P.O. Box 350
Trenton, NJ 08625-0350

Christine Juarez, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
PO Box 0003
Trenton, NJ 08625

Jay L. Kooper
Vice President, General Counsel, and Secretary
Middlesex Water Company
485C Route One South, Suite 400
Iselin, NJ 08830

James H. Laskey, Esq.
Norris, McLaughlin & Marcus, P.A.
400 Crossing Blvd., 8th Fl.
P.O. Box 5933
Bridgewater, NJ 08807-5933

Susan E. McClure
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street, P.O. Box 003
Trenton, NJ 08625

Bruce V. Miller, Esq.
Cullen and Dykman LLP
One Riverfront Plaza
Newark, NJ 07102

Paul Youchak, DAG
Division of Law
124 Halsey St.
PO Box 45029
Newark, NJ 07101

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW**

| | | |
|---|----------|--|
| IN THE MATTER OF THE PETITION OF NEW | : | |
| JERSEY-AMERICAN WATER COMPANY, | : | BPU Docket No.: WR17090985 |
| INC. FOR APPROVAL OF INCREASED | : | OAL Docket No.: PUC 16279-2018S |
| TARIFF RATES AND CHARGES FOR WATER | : | |
| AND WASTEWATER SERVICE, CHANGE IN | : | |
| DEPRECIATION RATES, AND OTHER | : | |
| TARIFF MODIFICATIONS – ACQUISITION | : | |
| ADJUSTMENT REMAND | : | |

**SUMMATION BRIEF OF PETITIONER
NEW JERSEY-AMERICAN WATER COMPANY, INC.**

BRUCE V. MILLER, ESQ.
SARMILI SAHA, ESQ.
CULLEN AND DYKMAN LLP
The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Phone: (516) 296-9133
Email: bmillercullenllp.com
ssaha@cullenllp.com

CHRISTINE SOARES, ESQ.
NEW JERSEY-AMERICAN WATER
COMPANY, INC.
One Water Street
Camden, New Jersey 08102
Phone: (856) 955-4879
Email: christine.soares@amwater.com

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | PRELIMINARY STATEMENT AND SUMMARY | 1 |
| II. | BURDEN OF PROOF | 5 |
| III. | STATEMENT OF FACTS | 6 |
| IV. | ARGUMENT OF LAW | 7 |
| A. | The Purchase Prices for Shorelands and Haddonfield Were Reasonable..... | 9 |
| 1. | Introduction | 9 |
| 2. | The Shorelands Purchase Price is Reasonable and Reflects Its Full Value to the NJAWC System..... | 10 |
| 3. | The Haddonfield Purchase Price is Reasonable | 12 |
| B. | NJAWC Has Demonstrated that the Acquisition Adjustment Should Be Included in Rate Base | 13 |
| 1. | The Shorelands Acquisition Provides Specific Benefits to Legacy Customers..... | 14 |
| 2. | The Shorelands Acquisition Directly Resulted in \$29 Million of Avoided Capital Costs..... | 15 |
| 3. | The Opposing Parties' Attempts to Contest the Shorelands Acquisition's Avoided Costs are Meritless and Should be Dismissed | 17 |
| 4. | The Shorelands Acquisition Resulted in \$18.9 Million in Deferred Capital Costs..... | 23 |
| 5. | The Shorelands Acquisition Creates Operational Synergies that Benefit NJAWC Customers | 25 |
| 6. | The Haddonfield Acquisition Provides Direct Benefits to Legacy Customers..... | 27 |
| C. | BPU Precedent Does Not Require an Acquiring Company to Forever Renounce Future Capital Projects to Recover an Acquisition Adjustment | 30 |
| V. | CONCLUSION..... | 33 |

TABLE OF AUTHORITIES

| <u>State Cases</u> | <u>Page</u> |
|--|---------------|
| <i>I/M/O Petition of Consumers N.J. Water Co.</i> , 1995 WL 592835, BPU Docket No. WR95050211 (N.J.B.P.U. Sept. 20, 1995)..... | <i>passim</i> |
| <i>I/M/O Petition of Jersey Central Power & Light Co. against Mary E. Rae, et al</i> , 2003 N.J. PUC LEXIS 358, BPU Docket No. EM01110788 (N.J.B.P.U. Sept. 11, 2003)..... | 5 |
| <i>In Re Elizabethtown Water Co.</i> , 62 P.U.R.4th 613, 1984 WL 981081 (N.J.B.P.U. Sept. 24, 1984) (overruled on other grounds) | <i>passim</i> |
| <i>In re Joint Petition of American Waterworks Company, Inc. et al.</i> , BPU Docket No. WM16101036, 2017 WL 1197225, (N.J.B.P.U. Mar. 24, 2017). | 10 |
| <i>In re New Jersey-American Water Company</i> ,193 P.U.R. 4th 30, 1999 WL 615854 (N.J.B.P.U. 1999) (overruled on other grounds)..... | 1 |
| <i>Kubs v. Jersey Central Power & Light Co.</i> , BPU Docket No. EC17121255U, 2018 WL 6812634 (N.J.B.P.U. Dec. 18, 2018) | 5 |
| <i>Pub. Serv. Elec. & Gas Co.</i> , 170 P.U.R.4th 334, 1996 WL 428441 (N.J.B.P.U. June 21, 1996)..... | <i>passim</i> |
| <i>Re Stonehill Water Co.</i> , BPU Docket No. 833-196 (N.J.B.P.U. Oct. 29, 1986) | 5 |
| <u>Administrative Decisions</u> | |
| <i>City of Trenton v. Lenzner</i> , 16 N.J. 465, 476, cert. den. 348 U.S. 872 (1955) | 11 |
| <i>In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling</i> , 167 N.J. 377 (2001) | 5 |
| <i>In re Public Serv. Electric & Gas Co.</i> , 35 N.J. 358 (1961). | 5 |
| <i>Liberty Mut. Ins. Co.</i> , 186 N.J. 163 (2006)..... | 5 |
| <i>MSGW Real Estate Fund, LLC v Mtn. Lakes Borough</i> , 18 N.J.Tax 364 (Tax 1998)..... | 6 |
| <i>Mtr. Of Valley Rd. Sewerage Co.</i> , 95 N.J. Super. 278 (App. Div. 1996) | 5 |
| <i>Nextel of New York, Inc. v Zoning Bd. of Adj. of Tp. of Edison</i> , A-4851-04T5, 006 N.J.Super. Unpub. LEXIS 2856 (App Div. Sept. 27, 2006) | 5 |
| <i>Petition of Pub. Serv. Elec. & Gas Co.</i> , 304 N.J.Super 247 (App. Div. 1997)..... | 5 |
| <i>Vil. of S. Orange v Alden Corp.</i> , 71 N.J. 362 (1976) | 11 |

I. PRELIMINARY STATEMENT AND SUMMARY

In this case, New Jersey-American Water Company, Inc. ("NJAWC," "New Jersey-American" or the "Company") seeks rate base treatment for an acquisition adjustment of \$26,738,000¹ related to its purchase of Shorelands Water Company, Inc. ("Shorelands") and an acquisition adjustment of \$1,798,369² related to its purchase of the Borough of Haddonfield's Water & Sewer System ("Haddonfield").³ All parties⁴ agree that BPU precedent permits a utility to recognize an acquisition adjustment in rate base where the acquisition produces benefits for the utility's legacy customers. In BPU matters, as in all areas of administrative law, the facts determine the outcome of the case. Here, the record permits no conclusion other than that New Jersey-American has proven by a preponderance of record evidence that the Shorelands and Haddonfield acquisitions benefited NJAWC's legacy customers.

The BPU has long advanced and continues to advance a broad policy of consolidating water systems and regionalizing water supply facilities for the purpose of ensuring safe, adequate and proper service.⁵ Consistent with this policy, NJAWC has a well-established history of acquiring and integrating water systems into its own system, enabling the Company to extend its operational and managerial expertise and safe and reliable water service to a wider customer base in the State of New Jersey and maximize economies of scale in order to increase efficiency.

The Company has also acquired other water systems to solve complex water infrastructure and supply issues for its legacy customers, thus allowing the Company to continue

¹ RC-30, RCR-E-42 Attachment, p. 3 of 3; P-73, RCR-A-16.

² RC-30, RCR-E-42 Attachment, p. 2 of 3.

³ The acquisition adjustments associated with the Company's purchase of Shorelands and Haddonfield are hereinafter together referred to as the "Acquisition Adjustment."

⁴ The parties in this phase of the remanded rate case are Staff of the New Jersey Board of Public Utilities ("BPU"), the New Jersey Division of Rate Counsel ("Rate Counsel"), Intervenor, Middlesex Water Company ("Middlesex") (collectively, the "Opposing Parties"), and Participant, New Jersey Utility Shareholders Association.

⁵ *In re New Jersey-American Water Company*, 193 P.U.R. 4th 30, 1999 WL 615854, at *10 (N.J.B.P.U. 1999) (overruled on other grounds) ("*Howell*").

to provide safe and reliable service in the most cost-efficient manner over the long term. New Jersey-American purchased Shorelands and Haddonfield for this very purpose. No other potential purchaser could have used or taken advantage of the capital cost avoidance, operational synergies or efficiencies the way the Company has done. Years before the Shorelands acquisition, NJAWC identified certain pressure/elevation and supply problems in the Coastal North that required costly capital investments. These expensive capital improvement projects had been previously planned and were reflected in the Company's Comprehensive Planning Studies ("CPSs"). Shorelands, however, due to its unique location surrounded by NJAWC and its beneficial pressure gradients, presented NJAWC with an exceptional opportunity to resolve these complex pressure problems, which would improve water supply and reliability in the Coastal North and achieve operational gains and synergies, while allowing the Company to avoid and/or defer these previously-planned capital projects. Similarly, the acquisition of Haddonfield allowed the Company to obtain valuable water allocation rights for its Camden County customers that were not otherwise available and to achieve operational synergies and savings for both legacy and acquired customers.

As discussed in the Company's Initial and Reply Briefs as well as at the November 21, 2019 oral argument in this proceeding ("Oral Argument"), NJAWC has proven by a preponderance of the evidence, established through sworn testimony and other competent, credible and relevant proof, that the Acquisition Adjustment should be recognized in rate base. A reasonable evaluation of the facts leads to the inescapable conclusion that NJAWC has satisfied the BPU standard set forth in *In Re Elizabethtown Water Company* that an acquisition adjustment should be recognized in rate base where the associated acquisition provides specific

benefits to legacy customers.⁶ Here, the evidence of specific customer benefits is overwhelming. The Shorelands acquisition resulted in the elimination and/or deferral of \$47.9 million in capital costs (*i.e.*, \$20 million more than the proposed Shorelands acquisition adjustment) as well as significant operational synergies that would not have occurred absent the acquisition. For Haddonfield, NJAWC has established through sworn testimony and other credible, competent, relevant and uncontested evidence that the acquisition secured vital water rights for NJAWC's Camden County system and created substantial operational efficiencies that benefit the Company's legacy customers. If these are not "benefits" for legacy customers, it is hard to imagine what would satisfy such a test. Any claim that the Company failed to meet its burden of proof is incorrect and contrary to the credible, competent and relevant evidence submitted in this proceeding.

For instance, to establish the \$29 million of cancelled projects related to the Shorelands acquisition, the Company not only offered the testimony of the officer in charge of planning and building those seven projects, Mr. Donald C. Shields, but also submitted evidence that the projects had long been included in the Company's capital project planning process along with the contemporaneous planning documents and other evidence establishing the previous need for those projects and their timelines. Of these seven specific projects, only two were specifically controverted by Rate Counsel's witness and even then, the objection was tepid, unrealistic and ultimately unproven. The benefits from the five other projects rendered unnecessary by the Shorelands acquisition were not specifically controverted, or even addressed, by Rate Counsel or any other party. In other words, for those projects there was a complete absence of *any* evidence countering the Company's *prima facie* showing.

⁶ *In Re Elizabethtown Water Co.*, 62 P.U.R.4th 613, 1984 WL 981081 (N.J.B.P.U. Sept. 24, 1984) (overruled on other grounds) ("*Elizabethtown*").

In the face of the overwhelming benefits established by the Company, the Opposing Parties devolve to the entirely speculative and unsupported claim that NJAWC "might" end up pursuing the cancelled projects at some indeterminate time in the future. This is not evidence, substantial, credible or otherwise. Nothing in the record even suggests that the Company will pursue the avoided projects. It is telling that, when asked if he had any reason to doubt the cancellation of one such project, Rate Counsel's expert said "no." In short, the Opposing Parties fail to provide any credible or competent evidence to overcome the quantum of evidence submitted by the Company; rather, the best the Opposing Parties can offer is sheer speculation that the Company *might* someday pursue the avoided projects.

In this case, it will not do to offer speculation and ignore the record evidence when the record overwhelmingly establishes that the previously-planned capital projects are no longer needed. The projects were cancelled because Shorelands *solved* the problems by allowing for more beneficial pressure gradients and water supplies that rendered the previously-planned projects unnecessary. Nevertheless, because the Opposing Parties continue to contend that NJAWC must commit to never pursue the avoided projects, and the ALJ raised the issue directly at Oral Argument, the Company provides a path forward. As discussed below, to address this vague and illusory "problem," the ALJ and the BPU could require NJAWC to notify the BPU and Rate Counsel in the unlikely event that circumstances require the Company to pursue any of the cancelled capital projects.

In short, NJAWC's acquisition of Shorelands and Haddonfield capitalized on opportunities to acquire systems with unique supply portfolios, locations and system pressure gradients that permitted NJAWC to: 1) avoid and/or defer significant capital investment that had

been previously needed; and 2) achieve operational gains and synergies otherwise not available. It is difficult to envision a more compelling case for recognition of the Acquisition Adjustment.

II. BURDEN OF PROOF

It is well-settled that in proceedings before the BPU, the petitioner or movant has the “burden of proof to show the validity of its position”⁷ and the applicable standard of proof in such proceedings is “generally one of a fair preponderance of the evidence.”⁸ “Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all human likelihood, is true.”⁹ Stated differently, “[u]nder the preponderance standard, ‘a litigant must establish that a desired inference is more probable than not.’”¹⁰ Once the petitioner has satisfied its burden of proof, “a party raising a defense to the moving party’s claim bears the burden of coming forward with evidence to support that defense.”¹¹ The New Jersey courts have held that BPU decisions must be based on findings supported by substantial credible evidence.¹² “Substantial evidence” is defined as “such evidence as a reasonable mind might accept as adequate to support a conclusion”¹³ and must be based on “substantiated proofs rather than unsupported allegations.”¹⁴

⁷ *I/M/O Petition of Jersey Central Power & Light Co. against Mary E. Rae, et al*, 2003 N.J. PUC LEXIS 358, BPU Docket No. EM01110788, at *5 (N.J.B.P.U. Sept. 11, 2003) (“*Mary E. Rae*”) (citing *Pub. Serv. Elec. & Gas Co.*, 170 P.U.R.4th 334, 1996 WL 428441 (N.J.B.P.U. June 21, 1996).

⁸ *Mary E. Rae* at *6 (quoting *Re Stonehill Water Co.*, BPU Docket No. 833-196 (N.J.B.P.U. Oct. 29, 1986)); see also *Liberty Mut. Ins. Co. v. Land*, 186 N.J. 163, 169 (2006) (“[a] preponderance of the evidence is also ‘the usual burden of proof for establishing claims before state agencies in contested administrative adjudications’” (internal quotations omitted)).

⁹ *Kubs v. Jersey Central Power & Light Co.*, BPU Docket No. EC17121255U, 2018 WL 6812634, at *6 (N.J.B.P.U. Dec. 18, 2018).

¹⁰ *Liberty Mut. Ins. Co.*, 186 N.J. at 169 (internal citations omitted).

¹¹ See *Petition of Pub. Serv. Elec. & Gas Co.*, 304 N.J. Super 247, 273 (App. Div. 1997) (“*PSEG*”).

¹² See e.g., *In re Pub. Serv. Elec. & Gas Co.’s Rate Unbundling*, 167 N.J. 377, 410 (2001) (“*Rate Unbundling*”); *Mtr. Of Valley Rd. Sewerage Co.*, 295 N.J. Super. 278, 286 (App. Div. 1996); see also *Re Pub. Serv. Elec. & Gas Co.*, 170 P.U.R.4th 334, 1996 WL 428441 (N.J.B.P.U. June 21, 1996) (“[a]lthough the [BPU] is not bound by the strict rules of evidence, the Courts in this State have held that there must be sufficient substantial, competent, and relevant evidence to support the reasonableness of the Board’s determinations”).

¹³ *In re Public Serv. Electric & Gas Co.*, 35 N.J. 358, 376 (1961).

¹⁴ *Nextel of New York, Inc. v Zoning Bd. of Adj. of Tp. of Edison*, A-4851-04T5, 006 N.J. Super. Unpub. LEXIS 2856, at *26 (App Div. Sept. 27, 2006).

Most important, substantial evidence “does not rise from bare surmise, conjecture, speculation or rumor.”¹⁵

Any reasonable analysis of the evidence adduced in this proceeding as discussed below would reach the inevitable conclusion that New Jersey-American established by a “fair preponderance of the evidence” benefits to its legacy customers well in excess of the Acquisition Adjustment. An equally reasonable analysis would also conclude that the Opposing Parties’ arguments are, at best, a partial response to the Company’s case (addressing only two of the seven cancelled projects, and even then, are based on theories that were self-defeating, disproved or surrendered) that ultimately devolve to mere speculation that some unforeseen facts at some indeterminate future date might bring about a resurrection of one or more of the cancelled projects. As noted above, a party contesting a *prima facie* case must produce evidence. Here, however, the Opposing Parties failed to produce actual evidence and instead offered only supposition and conjecture.

III. STATEMENT OF FACTS

The Company provided an extensive statement of facts in its Initial Brief. For the sake of brevity, the Company incorporates the previous statement of facts by reference and will not repeat it here. The Company’s arguments below provide, however, copious reference to the incontestable facts adduced in the record of this case. The Company notes that in its Reply Brief, it provided a chart showing a side-by-side summary comparison of the actual evidence NJAWC submitted versus the *lack* of evidence submitted by the Opposing Parties to demonstrate that NJAWC met its burden of proof and the Opposing Parties failed to rebut the Company’s *prima facie* showing. One need only glance at the chart and see the absence of content in the

¹⁵ *MSGW Real Estate Fund, LLC v Min. Lakes Borough*, 18 N.J.Tax 364, 375 (Tax 1998).

"Other Party Proofs" for the majority of the arguments to reach the conclusion that the Opposing Parties failed to refute NJAWC's burden of proof, which has been satisfied by overwhelming record evidence.

IV. ARGUMENT OF LAW

The record in this proceeding provides credible and uncontroverted evidence demonstrating that the Company has satisfied its burden to establish that the Acquisition Adjustment should be allowed in rate base. In the scant cases that the Company's evidence was questioned, the opposing arguments were either revealed to be empty speculation or were explicitly surrendered by the witness who offered them. In contrast to the Company's case, therefore, none of the Opposing Parties' arguments are based on substantial, credible or competent evidence sufficient to support a BPU finding in their favor.¹⁶

In *Elizabethtown*, the BPU held that it would "recognize the appropriateness of acquisition adjustments where a specific benefit can be shown, such as the acquiring of needed facilities which benefit the entire system."¹⁷ Similarly, in *Howell*, the BPU allowed NJAWC to recognize 13 acquisition adjustments in rate base, the largest of which represented a \$3,900,000 adjustment for the Howell Township Water System (the "Howell System"), asserting that acquisitions resulting in "specific benefits to ratepayers . . . warrant rate treatment."¹⁸ In its *Howell* analysis, the BPU considered the: 1) reasonableness of the purchase price; and 2) specific benefits to customers (e.g., remediation of supply deficiency, avoided costs resulting from the acquisition, etc.). The BPU also considered the Howell System's organizational value to

¹⁶ See PSEG at 273; *Rate Unbundling* at 410.

¹⁷ *Elizabethtown* at *614. The BPU also asserted that "[r]easonable incentives should be given for acquisition of small water companies which are typically undercapitalized and hard-pressed to provide safe, adequate, and proper service." *Id.* As the Company is not asserting, and has never asserted, that either the Shorelands or Haddonfield systems is troubled, the Company will not address this issue herein.

¹⁸ *Howell* at *14.

NJAWC and its existing customer base (*i.e.*, the value that the acquisition brought to NJAWC in the form of economies of scale, synergies resulting from a regional supply, opportunity to solve water supply issues, etc.). The BPU concluded that the Howell acquisition resulted in specific benefits to NJAWC such as, in relevant part, greater water supply security for existing customers and the avoidance of \$12.5 million in capital improvement costs which would otherwise have been incurred to address water supply deficiencies.¹⁹

At the Oral Argument, Rate Counsel attempted to distinguish *Howell* from the present case, asserting that in *Howell*, no party challenged NJAWC's: 1) valuation of the Howell System; or 2) calculation of net benefits resulting from the acquisition.²⁰ According to Rate Counsel, present circumstances differ because it has challenged both the Company's purchase price for Shorelands and the Company's net benefits analysis for Shorelands.²¹ Rate Counsel is wrong on both grounds.

First, Rate Counsel's characterization of the arguments raised in *Howell* is plainly incorrect. In *Howell*, Rate Counsel itself challenged the reasonableness of the Howell purchase price, arguing that the existence of a lower, competing bid rendered NJAWC's higher bid unreasonable.²² The BPU explicitly rejected this argument, holding the "the mere existence of a single competing bid" that was less than the purchase price was insufficient to establish that NJAWC's purchase price was unreasonable.²³ Accordingly, Rate Counsel's first basis for distinguishing *Howell* is wrong. Second, Rate Counsel has *not* credibly challenged the Company's analysis of the customer benefits created by the Shorelands acquisition despite its

¹⁹ *Id.* at *13-14.

²⁰ Oral Arg. Trans., Nov. 21, 2019 at 38:5 – 38:8.

²¹ *Id.* at 38:9-14.

²² *Howell* at *11.

²³ *Id.*

claims to the contrary. Rather, as discussed further below, Rate Counsel submits only speculation and conjecture rather than actual evidence to refute the Company's proof of the customer benefits resulting from the Shorelands acquisition. Thus, Rate Counsel's second basis for distinguishing *Howell* is also wrong.

In the present case, the Company amply demonstrated it should be allowed to recognize the Acquisition Adjustment in rate base under *Elizabethtown* and *Howell*²⁴ because: 1) the purchase prices of both acquired systems were reasonable given the operational value each system provides to the Company; and 2) Shorelands and Haddonfield confer significant benefits to legacy customers in the form of avoided and deferred capital costs and operational synergies.

A. The Purchase Prices for Shorelands and Haddonfield Were Reasonable

1. Introduction

NJAWC has demonstrated by a preponderance of the evidence that the purchase prices for Shorelands (\$51,468,660) and Haddonfield (\$28,500,000) were reasonable and thus the Acquisition Adjustment should be recognized in rate base.²⁵ In *Howell*, the BPU authorized the acquisition adjustment, in part, because it determined that: 1) NJAWC established the reasonableness of its purchase price for the Howell System; 2) the purchase price was adequately supported in the record; and 3) no party successfully rebutted the purchase price.²⁶ The same circumstances exist here.

²⁴ In *Howell*, the BPU ultimately decided to allow the utility to reflect only 50% of the Howell acquisition adjustment in rates, reasoning that the record in that proceeding did not provide the BPU with sufficient information to determine the comparative degree to which customers and shareholders experienced benefits resulting from the acquisition. *Id.* at *14. As discussed in more detail herein, such circumstances are not present here and the Company has provided abundant evidence indicating that the Acquisition Adjustment, in its entirety, should be properly included in rate base.

²⁵ In fact, the relative disparity in the respective acquisition adjustments sought for Shorelands and Haddonfield reflects, as it should, the significant benefits obtained by the Shorelands acquisition versus the relatively more modest benefits flowing from the Haddonfield acquisition.

²⁶ *Id.* at *12.

In the case at hand, the record evidence supports the reasonableness of the purchase price for both Shorelands and Haddonfield.

2. The Shorelands Purchase Price is Reasonable and Reflects Its Full Value to the NJAWC System

Before its acquisition and merger into NJAWC, Shorelands was a regulated, public utility corporation of the State of New Jersey serving approximately 11,000 customers in Hazlet Township and a portion of Holmdel Township. Shorelands had also provided bulk water sales to municipalities.²⁷ Both the Company and the Opposing Parties concede that Shorelands was not a troubled company.²⁸ Consequently, Shorelands could have continued operating and was in no way compelled to sell itself to any potential acquiror.

Counsel for Middlesex claims that “we’re now left with a situation where there’s no metric to basically judge whether we can reasonably ascertain whether the specific acquisition adjustment amounts requested by New Jersey American are either adequate or accurate or justifiable.”²⁹ Contrary to Middlesex’s claim, there is, in fact, a well-established metric to judge the reasonableness of the sale price.

Because Shorelands was under no compulsion to sell its system, NJAWC could not simply acquire the Shorelands system at its original cost less depreciation (“OCLD”). If NJAWC wanted to acquire Shorelands, it had to do so at a fair market price. The New Jersey Supreme Court has spoken clearly and consistently about what constitutes a “fair market price,” stating, “When we speak of ‘value’ as a measure of just compensation, we are referring to market value; and when we speak of market value we mean the price which would be mutually

²⁷ *In re Joint Petition of American Waterworks Company, Inc. et al.*, BPU Docket No. WM16101036, 2017 WL 1197225, at *1 (N.J.B.P.U. Mar. 24, 2017).

²⁸ See Oral Argument Trans., Nov. 21, 2019 at 57:11-14.

²⁹ *Id.* at 57:4-9.

agreeable to a willing buyer and a willing seller, neither being under compulsion to act.”³⁰ In an earlier case, the Court noted:

The measure of compensation is the fair market value. . . ‘value’ has many meanings, (and) oftentimes the value to the owner differs from the value to the acquirer, but . . . most things have a general demand which give them a value transferable from one owner to another. Ordinarily this transferable value may be measured by the price which, in all probability, would voluntarily be agreed upon in fair negotiations between an owner willing (but not forced) to sell and a buyer willing (but not forced) to buy; and it is this price which is generally said to determine the fair amount of compensation to be paid to the owner.³¹

The concept of “value to the acquirer” raised by the Court is particularly apt in this case. Here, NJAWC was not simply buying customers, as would have been the case with other potential utility suitors. In dramatic contrast, because of the distinct location and geography of Shorelands – surrounded by NJAWC’s service areas and occupying a unique and advantageous pressure gradient – Shorelands offered solutions to several vexing and costly pressure and water supply problems the Company then faced.

Because of the Shorelands system’s unique location, its acquisition allows NJAWC to optimize its water supply portfolio in this portion of Monmouth County. As discussed in more detail, *infra*, integrating Shorelands into the surrounding NJAWC Coastal North enables NJAWC to avoid capital projects associated with finished water storage that had been planned for the Coastal North system.³² Equally important, because of Shorelands’ unique location, the acquisition provided benefits to NJAWC that would not have been available to any other utility because their respective remote locations would have negated any such benefits and synergies.³³ And perhaps most telling, if the Company had not acquired Shorelands, perhaps losing it to a

³⁰ *Vil. of S. Orange v Alden Corp.*, 71 N.J. 362, 368 (1976).

³¹ *City of Trenton v. Lenzner*, 16 N.J. 465, 476 (1954); *cert. den.* 348 U.S. 872 (1955).

³² P-5, Shields Direct at 34:9-13.

³³ This is a basic concept. Acquiring an unbuildable parcel of land directly adjacent to a homeowner’s house clearly has more value to the homeowner (*i.e.*, in terms of coverage, setbacks, privacy, etc.) than to any other potential buyer who would only be purchasing a remote unbuildable parcel of land.

The Company's bid reflected the advantages and operational benefits Haddonfield could bestow on New Jersey-American's system, infrastructure and customers.³⁷ As Mr. Shields noted in his rebuttal testimony, "[h]ad another water purveyor been the successful bidder, it is unlikely that they would have been able to realize both the capital and operational synergies that NJAWC was able to achieve."³⁸ The benefit Haddonfield could confer on the UWC or Aqua systems is undoubtedly different given that the companies have different systems, operations, locations and customer bases. As such, the bids submitted by UWC and Aqua are immaterial. Moreover, the Opposing Parties provided no evidence regarding the basis for the competing bids; as a result, comparing the value of Haddonfield to NJAWC with the value of Haddonfield to UWC and/or Aqua is impossible.

In addition, the BPU has held that the "the mere existence of a single competing bid" less than the purchase price is insufficient to establish that a purchase price was unreasonable. In *Howell*, the BPU stated that the existence of a lower bid failed to establish that NJAWC's purchase price was unreasonable because there was no record evidence to explain how the lower bid was developed and the BPU has no "basis to conclude that the [lower] bid was any more or less reasonable than [NJAWC's higher] bid."³⁹ The situation here is no different.

B. NJAWC Has Demonstrated that the Acquisition Adjustment Should Be Included in Rate Base

In both its Initial and Reply Briefs, as well as in the underlying rate case testimony and exhibits, NJAWC thoroughly established by a preponderance of the evidence that the Shorelands acquisition resulted in significant avoided capital costs and the Haddonfield acquisition confers

³⁷ See *Howell* at *12 (NJAWC supported the reasonableness of the purchase price by showing the organizational value of the acquisition to the company and to its customers).

³⁸ P-7, Shields Rebuttal 16:1-3.

³⁹ *Howell* at *12.

operational efficiencies, both of which provide specific benefits to customers. Accordingly, including the Acquisition Adjustment in rate base is warranted under *Elizabethtown* and *Howell*. Further, as discussed below, the Opposing Parties fail to provide any meaningful rebuttal to the Company's evidence and instead rely on surmise, speculation and, in some instances, misstatements of the record in a futile attempt to refute the clear and uncontroverted record evidence.

1. The Shorelands Acquisition Provides Specific Benefits to Legacy Customers

The benefits of the Shorelands acquisition were established on the record by Mr. Shields, NJAWC's Vice President of Engineering and a professional with over 26 years of water and wastewater utility engineering experience, as well as Kevin Keane, a 30-year veteran of NJAWC. These Company witnesses provided detailed, credible evidence of the benefits arising from the Shorelands acquisition based on years of experience and first-hand knowledge working with the NJAWC system. Specifically, these professionals provided evidence and sworn testimony demonstrating that the Shorelands acquisition benefitted customers by enabling the Company to: 1) directly avoid \$29 million associated with previously planned capital projects; 2) defer an additional \$18.9 million associated with two previously planned capital projects for 5-10 years; and 3) achieve significant operational benefits from beneficial water pressures leading to fewer main breaks, reduced pumping costs, better water quality and lower purchased water costs.

The avoided and deferred capital projects were not some pie-in-the-sky afterthoughts that had been artificially created to justify the Shorelands acquisition premium. To the contrary, the Company had planned each project to address various, pre-existing pressure and water supply issues. Solely as a result of the Shorelands acquisition, however, NJAWC determined such long-planned projects could be either deferred or eliminated in their entirety. As discussed in more

detail below, the cancellation and/or deferral of these expensive capital projects directly benefits the Company's legacy customers, which would not have been achieved had NJAWC not had the foresight to acquire Shorelands.

2. The Shorelands Acquisition Directly Resulted in \$29 Million of Avoided Capital Costs

NJAWC should be permitted to include the Shorelands acquisition adjustment in rate base because the acquisition allowed the Company to avoid \$29 million in previously-planned capital projects – an amount in excess of the acquisition adjustment. This constitutes a specific benefit to ratepayers warranting rate base recognition under both *Elizabethtown* and *Howell*. In particular, the Shorelands acquisition resolved pressure equalization issues in NJAWC's Coastal North system (a point that Rate Counsel acknowledges)⁴⁰ as well as water supply issues that the Company previously planned to address through the following costly capital projects (collectively, the "Avoided Capital Projects"). In total, there are seven, individual and specific projects that comprise the \$29 million of avoided capital costs.

Five projects were avoided due to Shorelands' beneficial pressure gradients:

1. Replacement of the Middletown Navy Tank ("Navy Tank") (\$3,700,000) – Due to insufficient pressures and flows and consistent with the 2014 Coastal North CPS, the Company had planned to replace the Navy Tank with an elevated tank at a cost of \$3,700,000.⁴¹ Shorelands obviated the need for this project because the Company can now use Shorelands' elevated tanks to address pressure equalization issues during peak day demands in the Middletown gradient.
2. Construction of a Dual Purpose High/Low Gradient Tank ("Dual Purpose Tank") (\$3,500,000) – Before the Shorelands acquisition, the Company planned to construct the Dual Purpose Tank to provide additional storage to both the high and low gradients in Aberdeen and mitigate the high frequency of main breaks in the area.⁴² The integration

⁴⁰ Oral Argument Trans., Nov. 21, 2019 at 65:3-4.

⁴¹ P-7, Shields Rebuttal at 22:15-16; P-8, P-7, Shields Rebuttal at 22:13-15; P-86 at RCR-E-32 Attachment, p. 3 of 52; Tomac Direct at Schedule FXS-1; P-86 at RCR-E-32 Attachment, pp. 1, 4 of 52.

⁴² These main breaks were due to the fact that the Aberdeen low-pressure gradient had no tank storage to handle pressure surges caused when moving water is forced to stop or change direction. Consequently, the Company's Aberdeen system had a high main break level. P-86 at RCR-E-32 Attachment, p. 33 of 52; P-23, Keane Direct, 2:21-3:5; P-86 at RCR-E-32 Attachment, pp. 1, 30 of 52.

of the Shorelands and NJAWC system gradients along with Shorelands' additional storage tanks and water allocation, eliminated the need for the Dual Purpose Tank.⁴³

3. Conversion of the Union Beach Standpipe to Ground Storage (\$5,000,000) – NJAWC previously needed this conversion project to provide more ground storage.⁴⁴ The integration of the Shorelands and NJAWC system gradients along with Shorelands' additional storage tanks and water allocation eliminated the need to convert the standpipe.⁴⁵
4. Replacement of Five Pressure Reducing Valves ("PRVs") in the Aberdeen Zone (\$2.5 million); and
5. Replacement of Three PRVs in the Middletown Zone (\$800,000) (Total - \$3,300,000) – Before the acquisition, the Company had planned to replace PRVs to resolve system pressure issues in the Company's Aberdeen and Middletown Zones.⁴⁶ The reconfiguration of the pressure gradients made possible by the Shorelands acquisition eliminates the pressure differential that created the need for these PRVs.

In addition, two Avoided Capital Projects were cancelled due to the acquisition of Shorelands' water supply resources:

1. Development of Two Englishtown Wells (\$3,500,000) – Because several existing wells in the Lakewood gradient had deteriorated, were not operating at full capacity,⁴⁷ and were pumping below their monthly allocation limit, the CPS determined that the Company must construct two Englishtown Wells.⁴⁸ The availability of Shorelands' groundwater in the Coastal North eliminated the need for the two wells, allowing NJAWC to serve Lakewood locally through interconnections.⁴⁹
2. Construction of Four Miles of the Raritan-Middlesex Pipeline ("RMP") (\$10,000,000) – This project was intended to provide long-term water supply to the Coastal North from the Raritan Basin in lieu of constructing a more expensive new reservoir and in light of the diminishing short-term supply alternatives.⁵⁰ Planning for the project began as early as 2013.⁵¹ The integration of the two systems allowed NJAWC to shorten the length of the originally contemplated RMP by about four miles utilizing pipeline capacity within Shorelands.⁵²

⁴⁴ P-5, Shields Direct at 34:18-19; P-86 at RCR-E-32 Attachment, p. 2 of 52.

⁴⁵ P-5, Shields Direct at 34:18-19; P-86 at RCR-E-32 Attachment, p. 2 of 52.

⁴⁶ P-5, Shields Direct at 34:19-35:4.

⁴⁷ P-5, Shields Direct at 34:19-35:4.

⁴⁸ P-86 at RCR-E-32 Attachment, p. 5 of 52.

⁴⁹ *Id.*

⁵⁰ P-7, Shields Rebuttal at 24:3-16.

⁵¹ P-86 at RCR-E-32 Attachment, p. 1 of 52.

⁵² *Id.* at pp. 38-40.

⁵³ P-85, RCR-E-31; P-8, Tomac Direct at FXS-1; P-5, Shields Direct at 35:11-14.

As noted previously, an acquisition adjustment should be recognized in rate base where the acquisition results in “specific benefits to ratepayers.”⁵³ In the present case, the above record evidence establishes conclusively that the Shorelands acquisition enabled the Company to avoid an astonishing \$29 million in planned capital projects – a direct benefit to legacy customers that could not be achieved absent the acquisition.

3. The Opposing Parties’ Attempts to Contest the Shorelands Acquisition’s Avoided Costs are Meritless and Should be Dismissed

a. *Rate Counsel Only Disputed Two of the Seven Avoided Capital Projects*

The Opposing Parties’ attempts to discredit the record evidence regarding the Shorelands Avoided Capital Projects are based on nothing more than speculation and guesswork and should be dismissed. The New Jersey Superior Court, Appellate Division has stated that “a party raising a defense to the moving party’s claim bears the burden of coming forward with evidence to support that defense.”⁵⁴ As discussed below, the Opposing Parties fail to meet their burden of moving forward with actual evidence.

Although at Oral Argument Rate Counsel claimed it merely provided two “examples” of specific opposition to the seven Avoided Capital Projects,⁵⁵ these were not “examples.” They were the *only* arguments that Rate Counsel set forth either in the record or at Oral Argument. Specifically, Rate Counsel argues that the Company’s avoided cost claims for the Englishtown Wells and Navy Tank replacement projects are largely speculative and challenges the Company’s net benefits analysis. Rate Counsel’s objections to each of these two projects are, however, fatally flawed.

⁵³ *Howell* at *12.

⁵⁴ *See PSEG* at 273.

⁵⁵ Oral Arg. Trans., Nov. 21, 2019 at 41:16-21.

b. *Rate Counsel Only Disputed Two of the Seven Avoided Capital Projects*

First, regarding the Englishtown Wells, Rate Counsel cherry picks evidence to support its position that such wells must still be constructed. Specifically, at Oral Argument, Rate Counsel selectively quoted Mr. Shields' testimony that the Coastal North system has a "reliable maximum day supply deficit"⁵⁶ and Lakewood is experiencing high growth.⁵⁷ Rate Counsel, however, failed to acknowledge the overwhelming record evidence that the Company is appropriately managing supply issues in Lakewood through its work on many other capital projects, such as expanding the Sunset Road Water Treatment Plant ("WTP"). Mr. Shields' testimony actually states in the very same paragraph that, "[e]xpanding the [Sunset Road] WTP will increase the reliable maximum day capacity in the system and allow NJAWC to fully utilize the water allocation limits."⁵⁸ Indeed, a full reading of Mr. Shields' testimony indicates that this expansion project, which is currently under construction,⁵⁹ will provide an additional 1.73 mgd to the reliable maximum day capacity of the Coastal North system.⁶⁰ As neither Rate Counsel nor any other party refuted or even bothered to address Mr. Shields's testimony on this point, it stands unrefuted in the record.

Rate Counsel also ignores Mr. Shields's testimony that the Shorelands acquisition alleviated Lakewood's water supply issues because Shorelands groundwater, which is now part of NJAWC's Coastal North System, "allows water in the Northern parts of the system to remain in the Northern area, while the Lakewood system can be served locally." Mr. Shields further testified, "[Rate Counsel Witness] Woods does not consider this issue in his testimony. *These*

⁵⁶ *Id.* at 42:13-15 (quoting P-5, Shields Direct at 14:6-7).

⁵⁷ Oral Arg. Trans., Nov. 21, 2019 at 42:6-7.

⁵⁸ P-5, Shields Direct at 14:9-11 (emphasis added).

⁵⁹ P-5, Shields Direct at 14:6.

⁶⁰ P-5, Shields Direct at 15:18-19.

projects provide the very supply that Mr. Woods references in his testimony related to the elimination of the Englishtown wells."⁶¹ In addition, Mr. Shields testified that the Company is managing Lakewood's rapid population growth by expanding the Oak Glen WTP which provides finished water to the Coastal North system in the Monmouth Main and Lakewood/Howell services areas.⁶² Rate Counsel, along with the other Opposing Parties, conveniently fails to mention this evidence.

The Company has therefore submitted credible evidence, in the form of sworn testimony, which has not been refuted *with evidence* by any party, that: 1) the Company is actively managing Lakewood's supply issues; and 2) the Shorelands acquisition, by contributing additional groundwater, has alleviated Lakewood's supply constraints. Accordingly, the Company has made a *prima facie* showing that the Englishtown Wells project is no longer needed and has, therefore, satisfied its burden. In contrast, Rate Counsel's purported retort fails to even address the Company's evidence and misleadingly cherry picks from Mr. Shields's testimony. Rate Counsel has therefore failed its burden to present actual evidence to refute the Company's proof.⁶³

Further engaging in the realm of speculation and not evidence, Rate Counsel Witness Woods baselessly posited the Company "could decide" to build the Englishtown Wells after all and build them on schedule in 2020 to imply the associated costs should not be properly

⁶¹ P-7, Shields Rebuttal at 24:5-10 (emphasis added).

⁶² P-5, Shields Direct at 9:16-21.

⁶³ See PSEG at 273.

considered an avoided cost.⁶⁴ Yet, confronted on cross-examination at the evidentiary hearing, Mr. Woods was forced to retreat, conceding the emptiness of his conjecture:

- Q. Now, you also analyzed what would happen if the Company decides it needs to develop the two Englishtown wells in the Lakewood area. Correct?
- A. Right.
- Q. You have no reason to believe that those wells need to be developed. Do you?
- A. No.⁶⁵

In contrast to such conjecture, Mr. Shields explained precisely why, because of the acquired Shorelands water supplies, the Englishtown Wells are no longer needed – a system benefit saving \$3.5 million. Thus, the only actual evidence in the record is the Company's testimony that this project was planned and has been cancelled.

c. Rate Counsel's Claim that the Navy Tank Benefits are Illusory is Grounded in a Fundamental Misunderstanding of the Evidence

Second, with respect to the cancelled Navy Tank replacement project, Mr. Woods relied solely and arbitrarily on the tank's age (not its condition) to speculate that NJAWC would need to replace the tank in five years despite the Shorelands acquisition.⁶⁶ Mr. Woods acknowledged that he did not inspect the Navy Tank; he also did not provide any evidence regarding its useful life, nor could he say when or if NJAWC would need to replace it. Rate Counsel also failed to address the Company's evidence that proper maintenance of the Navy Tank, including applying engineered coating, will significantly extend the Tank's life at a much lower cost than replacement.⁶⁷

At Oral Argument, Rate Counsel once again asserted that the Navy Tank replacement project should not be considered an avoided project because the Tank would need to be replaced

⁶⁴ RC-1, Woods Direct at 35:14-17.

⁶⁵ Hearing Trans., June 11, 2018 at 145:3-8.

⁶⁶ R-1, Woods Direct at 34:12-18.

⁶⁷ P-7, Shields Rebuttal at 23:5-12.

anyway due to its age. Rate Counsel insisted that assuming the Navy Tank would last 107 years when it has a depreciation life of 72 years is simply “not reasonable.”⁶⁸ But Rate Counsel fails to consider Mr. Shields’s testimony that: “NJAWC operates 55 tanks built prior to 1960 that have been in service for more than 50 years. *Eight tanks have been in service for more than 100 years.*”⁶⁹ Again, speculation that it is unlikely that a tank would last 100 years cannot trump evidence that NJAWC has eight tanks in service that are aged 100 years or more.

Perhaps even more illuminating, Rate Counsel’s argument is based on a false premise regarding why the Navy Tank needed to be replaced in the first place. It was not due to the age or condition of the Tank, but the fact that it was not elevated and could not supply the requisite pressure for fire flow. Accordingly, the replacement tank needed to be an *elevated* tank – not at ground level, like the Navy Tank. The acquisition of Shorelands’ beneficial pressure gradients, however, eliminated the need for a new, elevated tank. The fact that the existing Navy Tank could be retained in service as a storage tank is irrelevant to that calculation. It is simply an added benefit of the acquisition.⁷⁰

Instead of actually refuting the Company’s arguments, Rate Counsel merely states that the Company’s Navy Tank replacement project analysis “doesn’t make a whole lot of sense.”⁷¹ This conclusory statement hardly satisfies Rate Counsel’s burden to present actual evidence to refute the Company’s proof as set forth in *PSEG, supra*.

Moreover, Rate Counsel provides no evidence to contradict NJAWC’s analysis about the original need to replace the Navy Tank with elevated storage, or about the Company’s ability to eliminate this project due to the Shorelands acquisition – the very reason why the Company

⁶⁸ Oral Arg. Trans., Nov. 21, 2019 at 44:12-13.

⁶⁹ P-5, Shields Direct 31:14-15.

⁷⁰ See Oral Arg. Trans., Nov. 21, 2019 at 62:24 – 63:3.

⁷¹ *Id.* at 44:6-7.

included the project in its avoided cost analysis. Rate Counsel's purely speculative objections, based on the opinion of a witness who neglected even to view the Navy Tank, do not overcome Mr. Shields' testimony, a witness with first-hand knowledge of the Company's system, that Shorelands eliminated the need for the Navy Tank replacement project. Thus, NJAWC has proven through a witness with *actual knowledge* that Shorelands conferred specific benefits – in the form of beneficial pressure gradients – to legacy customers that obviated the need to spend \$3,700,000 to replace the ground level Navy Tank with a new, elevated tank. Rate Counsel's guesswork, speculation and conjecture about the Navy Tank does not qualify as credible evidence sufficient to refute the Company's position.⁷²

d. No Party Offered Any Evidence to Counter The Company's Proof of the Benefits Arising from the Remaining Five Avoided Capital Projects and that Prima Facie Showing Remains Uncontested

As an additional matter, neither Rate Counsel nor any other party challenged the Company's evidence with respect to the *five* remaining Avoided Capital Projects. Thus, the \$21.8 million (*i.e.*, \$29 million less \$3.5 million (avoided costs resulting from cancelled Englishtown Wells project) and \$3.7 million (avoided costs resulting from cancelled Navy Tank replacement project)) of benefits arising from these cancelled projects are undisputed on the record because the Opposing Parties utterly failed to meet their burden in the face of the overwhelming quantum of evidence submitted by the Company. This is simply black letter law. The failure to even address five of the seven projects that were established by substantial and competent evidence is fatal to a claim that they stand "unproven."

BPU Staff's assertion at Oral Argument that the costs associated with the Avoided Capital Projects do not constitute true avoided capital costs because "these projects are purely

⁷² See PSEG at 273.

speculative” and “there has been no evidence provided that shows the company was actually planning on making these improvements”⁷³ conspicuously ignores the actual record. Exhibit P-86 directly addresses the Avoided Capital Projects and contains the relevant CPSs (including detailed engineering drawings, maps, cost estimates, pilot studies, etc.) which establish that prior to the Shorelands acquisition, the Company was actively planning to construct each Avoided Capital Project in order to alleviate pressure and supply problems in the Coastal North.⁷⁴ Not only is this exhibit, by itself, definitive proof that these projects were long planned and necessary, but the Company also submitted sworn testimony that they were actually planned. No party contested that proof or tested it upon cross-examination. Consequently, BPU Staff’s contention is patently inaccurate and does not reflect the actual record in this case.

Consequently, the evidence establishes beyond dispute that the Shorelands acquisition produced benefits of \$29 million to customers from avoided capital spending made possible by Shorelands’ beneficial pressure gradients, storage and water supplies.

4. The Shorelands Acquisition Resulted in \$18.9 Million in Deferred Capital Costs

The Shorelands acquisition adjustment should also be included in rate base because the acquisition benefits NJAWC customers by resulting in substantial deferred capital costs. Specifically, the Shorelands acquisition deferred the following capital projects (together, the “Deferred Capital Projects”), totaling \$18.9 million:

1. Construction of Six New Aquifer Storage and Recovery (“ASR”) Wells (\$14,900,000) – Before the acquisition, the Company planned to construct six new ASR wells, as recommended by the CPS, because the Coastal North system lacked

⁷³ Oral Arg. Trans., Nov. 21, 2019 at 52:3-11.

⁷⁴ P-86. This exhibit contains detailed planning information for each of the Avoided Capital Projects. See P-86 at RCR-E-32, pp. 3-8 (Navy Tank replacement project planning information); *id.* at RCR-E-32, p. 33 (Dual Purpose Tank project planning information); *id.* at RCR-E-32, p. 2 (Union Beach Standpipe conversion project planning information); *id.* at RCR-E-32, pp. 34-35 (PRV replacement project planning information); *id.* at RCR-E-32, pp. 5-6 (Englishtown Wells replacement project planning information); *id.* at RCR-E-32, pp. 1, 38-40 (RMP planning information).

adequate reliable capacity to meet summer peak demands. Due to the additional storage provided by Shorelands, NJAWC is able to delay this \$14.9 million project for at least five years.⁷⁵

2. Newman Springs Pump Station ("NSPS") Resiliency Projects (\$4,000,000) – In 2016, Kleinfelder, an outside engineering consulting company, conducted a Climate Resiliency Pilot Study recommending that NJAWC protect the site "with a full perimeter flood barrier constructed in concrete [as] the best overall value for adaptation to long-term possible flooding impacts out to 2070."⁷⁶ Now, because of the integration of Shorelands' elevated storage, NJAWC can delay improvements to the NSPS that Kleinfelder had recommended, deferring \$4 million in capital costs.⁷⁷

The BPU has held that an acquisition adjustment should receive rate treatment where the associated acquisition delays capital costs. In *I/M/O Petition of Consumers New Jersey Water Company*, Consumers New Jersey Water Company ("CNJ") sought to include in rate base a majority of the acquisition adjustment associated with its purchase of the Lakeland water system ("Lakeland") from Camden County.⁷⁸ The BPU permitted CNJ to recognize most of the acquisition adjustment in rate base because the acquisition of Lakeland's well, tank, and distribution system would enable CNJ to "delay the need to construct a new well for about 6 years" and avoid building a new 1.4 MG tank within the next few years, resulting in combined net present value benefits to CNJ's existing customers of over \$170,000.⁷⁹ Here, like *Consumers*, the record evidence in this proceeding demonstrates that the Shorelands acquisition enabled NJAWC to defer significant capital costs.

The record evidence establishing that the Shorelands acquisition resulted in \$18.9 million deferred costs, to the benefit of customers, also is uncontroverted. Rate Counsel Witness Woods speculated what might happen if NJAWC decided after all not to delay the NSPS,⁸⁰ but failed to

⁷⁵ P-5, Shields Direct at 35:19-20; P-86 at RCR-E-32 Attachment, pp. 1, 7-16 of 52.

⁷⁶ *Id.* at p. 22 of 52.

⁷⁷ P-5, Shields Direct at 35:20-36:2.

⁷⁸ *I/M/O Petition of Consumers N.J. Water Co.*, 1995 WL 592835, BPU Docket No. WR95050211 (N.J.B.P.U. Sept. 20, 1995) ("Consumers").

⁷⁹ *Id.*

⁸⁰ RC-1, Woods Direct at 35:17-36:2.

provide any actual evidence that the deferral would not occur. This is unsurprising because there is none. No other party contested the Company's deferred cost analysis.

Thus, the Company has demonstrated that the Shorelands acquisition, like the Lakeland acquisition in *Consumers*, benefits legacy customers by deferring capital projects.

5. The Shorelands Acquisition Creates Operational Synergies that Benefit NJAWC Customers

As discussed in the Company's Initial Brief, the Shorelands acquisition also yields extensive operational synergies which benefit both the Company's legacy and newly-acquired customers. These operational synergies are yet another benefit to ratepayers resulting from the acquisition, further establishing that the Acquisition Adjustment should be recognized in rate base pursuant to *Elizabethtown* and *Howell*.

The record provides numerous examples of these operational synergies and the advantages they confer to customers. For example, as Company Witness Kevin Keane testified, integration of Shorelands with and into NJAWC "create[s] overall lower operating pressures in the combined systems, which translates into lower energy consumption, fewer main breaks and overall greater operational savings."⁸¹

The Shorelands acquisition has or will also result in the following operational synergies:

- 1) The merger of Shorelands' 185' HGL gradient and system storage tanks with the existing NJAWC system will reduce the high frequency of main breaks in Aberdeen.
- 2) Full utilization of Shorelands' elevated storage tanks will reduce pump run times during peak demand periods and eliminate the need to operate additional pumps due to main break events, leading to increased power savings.⁸²
- 3) The Shorelands acquisition will improve water supply in the region and reduce overall operating expenses.⁸³

⁸¹ P-23, Keane Direct at 2:18-21.

⁸² P-23, Keane Direct at 2:21-3:20.

⁸³ Specifically, the Shorelands acquisition will leverage economies of scale which will result in the following efficiencies: 1) reduced production expenses and operational supply costs for Shorelands because NJAWC will possess greater buying power and can therefore seek more competitively priced goods and services (P-23, Keane Direct at 5:2-19); and 2) production expenses and the cost of operational supplies for Shorelands will decrease, as

- 4) The need for the Company's Union Beach system to purchase water from Shorelands through two interconnects is eliminated.⁸⁴ As a result, NJAWC will no longer charge the associated purchased water costs to existing customers, a direct financial benefit to legacy customers.⁸⁵
- 5) Purchased water costs from the Marlboro MUA and/or the New Jersey Water Supply Authority during peak periods will decrease.⁸⁶
- 6) The acquisition diversifies water supply for existing NJAWC customers because "ground water diversion from the Shorelands system wells will be optimized during peak production periods."⁸⁷
- 7) Shorelands' water assets will "drive operational efficiencies and help balance and manage limited water resources in a growing area of the state."⁸⁸
- 8) NJAWC's acquisition of new water systems and customers has helped drive down operating costs from \$327 per customer to \$305 per customer for an annual savings of \$14,000,000 on a pro-forma basis.⁸⁹

No party contested the operational benefits created by the Shorelands acquisition. Indeed, on cross-examination at the evidentiary hearing, Rate Counsel Witness Woods responded:

- Q. And, the Company also testified about operational benefits, and cost reductions from Shorelands. Isn't that correct?
- A. It did.
- Q. And, you haven't rebutted that at all?
- A. I don't dispute those. No.⁹⁰

The examples above abundantly illustrate that the Shorelands acquisition directly benefitted customers through operational synergies and economies of scale that optimized NJAWC's water supply portfolio in the Coastal North system, remedied water supply deficiencies and increased system reliability. These benefits provide real value to NJAWC's

NJAWC possesses greater buying power and can competitively seek lower prices for goods and services. P-23, Keane Direct at 5:2-19. NJAWC also reduced the employee count for the Shorelands system from 25 to 14, lowering salary expenses. *Id.* at 6:12-18. Further, NJAWC can now use Shorelands' Hazlet location as an additional storage yard, limiting drive time to transport material and equipment to the region and eliminating rental costs for remote garage space. *Id.* at 6:20-7:4

⁸⁴ *Id.* at 4:1-7.

⁸⁵ P-7, Shields Rebuttal at 25:6-7.

⁸⁶ P-23, Keane Direct at 4:12-14; P-7, Shields Rebuttal at 25:7-18.

⁸⁷ P-23, Keane Direct at 4:7-9.

⁸⁸ P-7, Shields Rebuttal at 21:6-9.

⁸⁹ P-22, Shroba Rebuttal at 2:8-10.

⁹⁰ Hearing Trans., June 11, 2018 at 145:3-8.

customers, both financially and in terms of service reliability and quality, thus also satisfying the standard under *Elizabethtown* and *Howell* for acquisition adjustment inclusion in rate base.⁹¹

6. The Haddonfield Acquisition Provides Direct Benefits to Legacy Customers

NJAWC also established by a preponderance of the evidence that the more modest \$1,798,369 Haddonfield acquisition adjustment also should be recognized in rate base because the acquisition results in operational synergies that benefit NJAWC legacy customers. Thus, the Haddonfield acquisition adjustment merits inclusion in rate base pursuant to *Elizabethtown* and *Howell*.

Specifically, the Haddonfield acquisition produces the following operational synergies which assist both legacy and acquired customers:

- 1) Before the acquisition, only two interconnections existed between NJAWC and Haddonfield. The acquisition facilitated installation of 10 additional interconnections which increased the redundancy of supply feeding Haddonfield and the ability of both systems to resist operational disruptions, such as main breaks, thus increasing their resiliency.⁹²
- 2) The merger eliminated five dead-end water mains in Haddonfield and two dead-end mains in NJAWC's existing system, reducing the risk of water interruptions and water quality issues in Haddonfield.⁹³
- 3) Due to the acquisition, NJAWC decommissioned the Cottage Avenue standpipe. Had NJAWC not acquired the Haddonfield system, Haddonfield would have needed to demolish and replace it at a cost of approximately \$5,000,000 due to concerns regarding the tank's size and location.⁹⁴
- 4) Because of the acquisition, NJAWC constructed the Atlantic Ave. Lift Station, which eliminated an inaccessible gravity sewer main located in a swampy area of Haddonfield that was the site of multiple undetected overflows impacting the adjacent Cooper River. At the same time, the gravity main was critical and conveyed

⁹¹ Rate Counsel's contention that the Company's legacy customers will be subsidizing Shorelands customers if the BPU approves its acquisition adjustment (Oral Argument Trans., Nov. 21, 2019, at 45:19 - 46:11) is a red herring. Whether Shorelands' revenues cover its cost of service is entirely irrelevant to whether NJAWC should be permitted to recover the Shorelands acquisition adjustment – a fact that Rate Counsel conceded in its May 31, 2019 letter brief. See P-308, Tomac Surrebuttal at 2:21-3:3. Accordingly, this meritless argument should be dismissed.

⁹² P-24, Forcinito Direct at 3:14-17.

⁹³ *Id.* at 3:17-22.

⁹⁴ P-24, Forcinito Direct at 3:14-17; 4:19-21.

approximately half of Haddonfield's sanitary flows. The new Lift Station not only benefits Haddonfield, but also protects the environment in NJAWC's service area as well as the quality of the watershed of a major river of the State of New Jersey.⁹⁵

- 5) Due to declining water levels in the Potomac-Raritan-Magothy ("PRM") aquifer system, state regulations control the amount of water withdrawals from the aquifer and all water supply companies were given annual diversion limitations on water withdrawals in the PRM aquifer. The Haddonfield acquisition included water diversion rights at a rate of 61.9 million gallons per month and 366.797 million gallons per year.⁹⁶ The transfer of Haddonfield allocation limits to an existing NJAWC permit allows NJAWC to use the allocation across multiple facilities and over a broader service area.⁹⁷ As a result, both existing and acquired customers in various service areas benefit through increased supply, as do customers of other systems that purchase water from the Company.
- 6) The Haddonfield system also adds to NJAWC's economies of scale, creating additional value for all customers. For example, NJAWC reduced the per-customer-cost of state-mandated water sampling requirements because it can spread them over a larger customer base.⁹⁸ Further, NJAWC can manage water quality in a more holistic and efficient manner in the Southwest Region, rather than on an isolated, system-by-system basis, resulting in fewer water-quality complaints.⁹⁹

No party provided any evidence to dispute any of the above-described operational synergies resulting from the Haddonfield acquisition.¹⁰⁰

The numerous examples above clearly demonstrate that the Company's legacy customers directly benefitted from the Haddonfield purchase through the gain of Haddonfield resources and infrastructure which increased water reliability and improved the efficiency of the NJAWC system overall. Again, as no party opposed the Company's evidence regarding these benefits,

⁹⁵ P-37, Cuthbert Rebuttal at 6:15-7:4.

⁹⁶ P-37, Cuthbert Rebuttal at 5:4-5.

⁹⁷ P-97, Response to RCR-E-90.

⁹⁸ P-24, Forcinito Direct at 7:4-6.

⁹⁹ *Id.* at 7:5-9.

¹⁰⁰ Company witness Ms. Cuthbert determined the OCLD relying on her direct experience and knowledge of Haddonfield, which she gained over the seven years that she spent as Haddonfield's engineer in charge of the Haddonfield system. Mr. Woods' application of NJAWC's depreciation rates to Haddonfield is baseless and has nothing to do with the actual Haddonfield plant. Mr. Woods has no experience with how long Haddonfield assets have remained in service and whether they are used and useful. Nevertheless, he proposed retroactively applying depreciation rates from other service areas to Haddonfield. He once again proposes to disregard testimony of witnesses with first-hand knowledge and replace it with speculation. Mr. Woods' adjustment to depreciation lives actually used by Haddonfield should be disregarded and NJAWC's OCLD should be accepted.

they stand uncontested in the record. Accordingly, the Haddonfield acquisition satisfies the relevant BPU standard and the associated acquisition adjustment should be recognized in the Company's rate base.

Rate Counsel argues that the Haddonfield acquisition adjustment should not be recognized because the acquisition benefitted the acquired customers rather than the Company's legacy customers. As discussed above, the record is replete with examples of the numerous operational benefits improving system reliability which flow to legacy customers.¹⁰¹

Rate Counsel also claimed at Oral Argument that while the water allocation rights have been transferred, the actual diversion points remain in the Haddonfield system and the Haddonfield wells cannot be used because the Center Street treatment plant has been decommissioned.¹⁰² Thus, according to Rate Counsel, the "usefulness of the of the [Haddonfield allocation rights] is questionable."¹⁰³ Rate Counsel's purported challenge is another red herring. The key benefit is the water allocation rights which permit the Company to increase the amount of water it can pump from the PRM aquifer, thereby increasing customer water security, and which has already been transferred to the Company's existing permit. The diversion point is trivial; now that the Company owns the allocation rights, it can alter the diversion points to suit the needs of its system. Mr. Shields went on to note that the Company has already transferred the Haddonfield allocations to other wells within the NJAWC Camden County System – a clear

¹⁰¹ Middlesex's argument that the Company failed to mention any "benefits which might accrue to the NJAWC shareholder" and as a result "it is difficult to consider how the acquisitions strike a fair balance between customers and the NJAWC shareholder" (Middlesex Reply Brief at 8) is yet another red herring proffered by the Opposing Parties. No party asserted that the numerous benefits resulting from either the Shorelands or Haddonfield acquisitions flowed to shareholders rather than customers; in fact, these projects relate to system improvements and increased reliability which clearly benefit customers.

¹⁰² Oral Argument Trans., Nov. 21, 2019 at 49:4-16.

¹⁰³ RC-84, Woods Surrebuttal 3:15-16.

benefit to legacy customers.¹⁰⁴ Thus, the inability to use the Haddonfield wells due to the decommissioning of the Center Street treatment plant is irrelevant.

C. BPU Precedent Does Not Require an Acquiring Company to Forever Renounce Future Capital Projects to Recover an Acquisition Adjustment

As NJAWC argued in its Reply Brief, Rate Counsel's contention, echoed by BPU Staff and Middlesex, that the Company failed to satisfy its burden of proving net benefits to legacy customers because "[a]lthough the Company claims that it will avoid certain capital costs, it has never committed to doing so" has no basis in law or fact.¹⁰⁵ This tenuous position ignores the uncontroverted testimony by the Company's witnesses that it cancelled the Avoided Capital Projects as a result of the integration of Shorelands into NJAWC. This testimony was substantiated by contemporaneous documentary evidence showing that, prior to the Shorelands acquisition, the Avoided Capital Projects were needed and had been incorporated in NJAWC's capital planning process. The Company has, therefore, demonstrated that need for the Avoided Capital Projects has been eliminated as a result of the Shorelands acquisition through the record evidence as set forth in the Initial Brief, the Reply Brief and at Oral Argument. Those arguments will not be repeated here.

The Company will, however, address the suggestion of Rate Counsel and BPU Staff that the Company must look inside a crystal ball and predict whether future problems, yet unknown to the Company, or any other party, may possibly be solved by the Avoided Capital Projects at some unknown point in the future. Preliminarily, this is not the standard under *Elizabethtown*.

¹⁰⁴ P-7, Shields Rebuttal 17:17-18.

¹⁰⁵ Rate Counsel Initial Brief at 9. At the Oral Argument, Rate Counsel erroneously referred to the ASR Wells as an Avoided Capital Project and challenged the Company for not committing to renounce the ASR Wells project forever. Oral Argument Trans., Nov. 21, 2019 at 65:19-25. However, the Company has consistently referred to the ASR Wells as a Deferred Capital Project and has never stated that the project was an Avoided Capital Project. As such, Rate Counsel's criticism that the Company failed to make a commitment regarding the ASR Wells has no record basis and should be ignored. *See also*, BPU Staff Initial Brief at 7.

Elizabethtown does not require a finding that the net benefits resulting from an acquisition inure to all legacy customers in the Company's legacy service territory from the date of the acquisition through infinity. And in *Howell*, for example, the BPU permitted an acquisition adjustment because the acquisition enabled NJAWC to avoid \$12.5 million in capital improvement costs – however, the BPU did not require NJAWC to pledge it would never pursue the avoided capital improvement projects in the future.

Additionally, the argument unfairly requires that the Company prove a negative: that some future, different problem will not occur that would require the Company to invest in one or more of the seven Avoided Capital Projects after all. As a practical matter, a commitment by NJAWC to never pursue one of the Avoided Capital Projects would be both premature and irresponsible.¹⁰⁶ NJAWC's capital plans and forecasts are at the mercy of a variety of changing circumstances which are outside of NJAWC's control (*e.g.*, regulatory requirements, environmental factors, changes in customer growth patterns, weather, etc.). Nevertheless, on this record, and on these facts, the Company certainly does not plan to pursue the Avoided Capital Projects. Finally, the record demonstrates that the Avoided Capital Projects are exactly as the Company has characterized them – avoided and cancelled.

Even a casual perusal of the Avoided Capital Projects would lead to the conclusion that they will not be built. For example, five of the seven projects (Navy Tank, Dual Purpose High/Low Gradient Tank, Conversion of the Union Beach Standpipe, replacement of the PRVs in both Aberdeen and Middletown) were critical, largely in part, to address pressure problems (moving water up or down). Those pressure problems, however, were solved by the acquisition of Shorelands' elevated tanks and the merger of the two gradients. Mr. Shields clearly explained

¹⁰⁶ At the Oral Argument, both Rate Counsel and the ALJ conceded that such a commitment would be irresponsible. Oral Arg. Trans., Nov. 21, 2019 at 66:3-4; 66:18-19.

that by combining NJAWC and Shorelands, the two 375 HGL tanks in the Holmdel part of the Shorelands system would benefit NJAWC's Red Hill pressure zone.¹⁰⁷ The other two tanks in the Hazlet 185 HGL would benefit the creation of a new Middletown Low and be incorporated as one larger 185 HGL pressure zone, improving control over system flows and pressures and improving operational efficiencies.¹⁰⁸ Moreover, the gradient merger activity eliminated the need to replace five PRVs in the Aberdeen Zone and three PRVs in the Middletown Zone. Because the Shorelands acquisition has solved these pressure deficiencies, these projects are manifestly no longer required. In other words, because PRVs are designed to regulate pressure in between pressure gradients and the historical pressure gradients will no longer exist, these eight PRVs no longer have any relevance or need to be replaced.

Shorelands' elevation and its gradient are immutable geographical states. Short of a major shift in the land upon which Shorelands sits, it is difficult to imagine a circumstance that would replicate the pressure problems for NJAWC's legacy customers that existed before the acquisition.

Likewise, it is difficult to imagine how the two previously-planned Coastal North water supply projects, *i.e.*, the RMP and the Englishtown Wells projects, would be necessary in the future. NJAWC shortened the length of the RMP by four miles because Shorelands was within the proposed pipeline's route. Unless Shorelands suffers some catastrophic demise, the need to build an additional four miles of main will never occur. Neither will the cancelled Englishtown Wells project be resurrected. Indeed, as noted above, Rate Counsel's own expert could point to no reason why that such project would be resurrected. Thus, the likelihood that any of the

¹⁰⁷ P-5, Shields Direct at 34:19 - 35:1.

¹⁰⁸ P-5, Shields Direct 35:1-4.

Avoided Capital Projects would be brought back to life is not foreseeable on this record or, indeed, in any logical review of those projects.

Nevertheless, the Company recognizes that the Opposing Parties and the ALJ still harbor reservations about the possible resurrection of one or more of the Avoided Capital Projects, however unlikely and unsupported on this record that contention may be. Consequently, the ALJ has the discretion to recommend that, if future circumstances, which are unforeseen and unlikely at this time, require the Company to pursue one or more of the Avoided Capital Projects and seek its recovery, the Company must notify the BPU and Rate Counsel of its intention to pursue such a project and identify that project as having been part of the basis of the acquisition adjustment which was allowed in this case. Such a requirement would appropriately balance: 1) the concerns of the Opposing Parties (which are, albeit, based on nothing more than speculation); 2) the realities of the record evidence (which indicate that the projects are no longer needed); and 3) the Company's responsibility to provide customers with safe and reliable water service despite circumstances beyond its control and ability to predict.

V. CONCLUSION

New Jersey-American has demonstrated that the respective acquisitions of Shorelands and Haddonfield have produced the requisite tangible benefits for legacy customers; specifically, in the form of \$29 million of avoided capital spending, \$18.9 million in deferred capital spending, and a host of cost savings and operational efficiencies, synergies and improvements. The record demonstrates the reasonableness of New Jersey-American in incurring the acquisition adjustments. Indeed, the Shorelands acquisition adjustment exceeds that of Haddonfield by almost \$25 million, even though the OCLDs of the two systems are similar, reflecting the value of each system to NJAWC and the reasonableness of the purchase price. The benefits from the

avoided or deferred capital projects that resulted from the Shorelands acquisition are vast versus the more modest benefits arising from Haddonfield. As noted, in acquiring Shorelands, New Jersey-American was not buying customers. It was buying solutions to water pressure, supply and operational problems that were unique to NJAWC and could not be replicated by any other utility suitor. In acquiring Haddonfield, the Company was acquiring extremely valuable water allocation rights and improving efficiency. Moreover, had New Jersey-American passed up on the opportunity to acquire these utilities, the solutions they offered to operational and capital improvements and efficiencies would have been lost forever.

Under the circumstances, denying a full recovery of the Acquisition Adjustment as the Opposing Parties advocate would be adverse to long-standing BPU precedent and turn the rules of evidence on their head. But, equally important, as recently as at its Agenda Meeting of December 6, 2019 (Item 5B), the BPU reiterated its goal of further consolidating the smaller remaining (50 entities) water purveyors with larger systems that are more able to meet water quality standards and their associated capital requirements. Indeed, the BPU agreed explicitly with its Staff advisor's view that:

[W]e have been encouraging consolidations. And it's to everyone's best interests for the smaller companies to consider being merged into a larger system. The capital improvements are just more excessive [than] what the small company can typically afford.¹⁰⁹

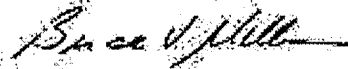
Not only would denial of the Acquisition Adjustment here be directly contrary to BPU policy, precedent and the undisputed facts, but it would frustrate, rather than advance, the BPU's stated goals favoring consolidation of water systems, regionalization and leveraging economies of scale. Such a holding could discourage, rather than encourage, acquisitions in the future.

¹⁰⁹ BPU Agenda Meeting Trans., Dec. 6, 2019 at 6:9-14.

For all the reasons stated herein, the Company respectfully requests that the Company be permitted to include the \$28,536,369 Acquisition Adjustment associated with the purchase of Shorelands and Haddonfield in rate base.

Dated: January 8, 2020

Respectfully submitted,



By:

Christine Soares
Corporate Counsel
American Water – Eastern Division
1 Water Street
Camden, New Jersey 08102
Tel: (856) 955-4879

Bruce V. Miller
Sarmili Saha
Cullen and Dykman LLP
One Riverfront Plaza
Newark, New Jersey 07102
Tel: (516) 296-9133

*Attorneys for Petitioner New Jersey-
American Water Company, Inc.*

rival bidder, the benefits of the acquisition would have been lost to the Company and its customers forever.

Clearly, then, the acquisition price necessary to obtain Shorelands cannot be viewed in a vacuum. Rather, it must be viewed in terms of its value to NJAWC which in turn, reflects the amount that NJAWC was willing to bid on Shorelands and the amount that Shorelands was willing to accept from NJAWC, *i.e.*, the fair market price that two parties "voluntarily...agree[] upon in fair negotiations."³⁴

In that context, Shorelands' organizational value to NJAWC of \$72,400,000³⁵ (which does not even include the operational efficiencies and benefits arising from the acquisition) well exceeds the \$51,468,660 purchase price. Consequently, the wisdom of the Shorelands acquisition is manifest. Moreover, no party contested Shorelands' OCLD recorded by NJAWC on its books nor did any party credibly dispute the value of the avoided and capital costs resulting from the acquisition or the manifest operational benefits.

3. The Haddonfield Purchase Price is Reasonable

With respect to Haddonfield, the Opposing Parties argue that the purchase price was unreasonable because during the competitive bidding process, the former United Water Company ("UWC") and Aqua New Jersey ("Aqua") submitted lower bids.³⁶ As noted above, however, the reasonableness of an acquisition's purchase price is determined by the organizational value it confers on the acquiring company. Thus, the existence of lower bids is irrelevant and has no bearing whether the Haddonfield purchase price was reasonable.

³⁴ *City of Trenton*, 16 N.J. at 476.

³⁵ The organizational value is calculated by adding Shorelands' OCLD of \$24,540,203 and \$47,900,000, representing avoided and deferred capital.

³⁶ See BPU Staff Initial Brief at 18.