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TRENTON, NJ

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January 18, 2019

VIA ELECTRONIC AND OVERNIGHT MAIL

Hon. Jacob S. Gertsman, ALJ
Office of Administrative Law
P.O. Box 49
Trenton, NJ 08625-0049

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 16279-2018-S

Dear Judge Gertsman:

This Office represents the Staff of the New Jersey Board of
Public Utilities ("Board Staff" or "Staff") in the base rate
case filed by New Jersey American Water ("NJAW"). Please accept
this letter in support of the Board Staff's position in this
matter in lieu of a more formal submission.

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PRELIMINARY STATEMENT

New Jersey Board of Public Utilities Staff ("Board Staff" or "Staff") submits this brief in support of its position that New Jersey American Water Company ("NJAWC" or "Company,") is not entitled to the two plant acquisition adjustments it proposed. NJAWC seeks recognition of an adjustment of \$26,722,978 representing the premium paid over, original cost less depreciation, for the acquisition of Shorelands Water Company ("Shorelands"), and an adjustment of \$1,798,369 representing the premium paid over, original cost less depreciation, for the acquisition of Haddonfield Township's Water and Wastewater system ("Haddonfield"). However, NJAWC has failed to show that ratepayers benefit from the \$28,521,347 premiums which NJAWC paid to acquire these systems. Therefore, it is neither just nor reasonable for ratepayers to bear these costs, and these adjustments should not be recognized.

PROCEDURAL HISTORY¹

¹ The Court previously bifurcated this matter and decided a majority of the issues in its initial decision ("ID") which was adopted by the Board on October 29, 2018. In re Petition of New Jersey American Water Company, Inc. for Approval of Increased Tariff Rates and Charges for Water and Wastewater Service, Change in Depreciation Rates and other Tariff Modifications, BPU Docket No. WE17030985, Order dated October 29, 2018 ("October 29 Order"). The ID and the October 29 Order contain a complete

On September 14, 2017, NJAWC filed a petition, with the Board requesting an increase in operating revenues of \$129.3 million, or approximately 17.54% over projected pro-forma rate revenues. (PT-1 ¶ 12).

On September 27, 2017, the Board transmitted this matter to the Office of Administrative Law ("OAL") as a contested case and it was assigned to Administrative Law Judge ("ALJ") Jacob S. Gertsman. After proper notice, four public hearings were held. ALJ Gertsman presided over evidentiary hearings on June 11, 13, 14, and 18, 2018.

On August 1, 2018, ALJ Gertsman held a hearing to discuss the issues raised by Rate Counsel and Board Staff with respect to a New York Public Service Commission Report indicating that American Water Works Company, Inc., had knowingly submitted false information in a base rate proceeding before the commission. New York American Water Company ("NYAWC") submitted incorrect information to the commission with respect to property tax calculations for the assets acquired by NYAWC. Two employees who were implicated in the report submitted pre-filed and/or live testimony in this matter. Thereafter, at the direction of the Board and the ALJ, NJAWC retained Price Waterhouse Coopers ("PwC") to perform an Agreed Upon Procedures procedural history, so Staff has limited this section to information relevant to this proceeding.

Report ("PwC Report") regarding the schedules, applicable Standard Information Requests and utility plant asset records in Power Plant for, among other things, the Haddonfield and Shorelands acquisitions. With respect to the acquisitions, PwC verified that correct amounts were transposed when entered into NJAWC's books and records. At a September 25, 2018 hearing, the PwC Report was received and the Parties² agreed that the record was verified to the extent possible.

On October 16, 2018, the Company, Board Staff, Rate Counsel, and the OIW Customer Coalition reached a partial stipulation of settlement ("Partial Stipulation") with regard to the revenue requirement, rate and tariff design.³ They agreed that the Partial Stipulation did not resolve the issue of whether NJAWC is permitted to recognize the proposed acquisition adjustments for Shorelands and Haddonfield.

Thus, on October 18, 2018, ALJ Gertsman issued the ID bifurcating the matter and recommending adoption of the Partial

² The Parties to this case include: NJAWC; Rate Counsel; Board Staff; Rutgers, the State University; Princeton University; Phillips 66 Company; Johanna Foods, Inc.; and Cogen Technologies Linden Venture, L.P. (collectively, the "OIW"); Middlesex Water Company ("Middlesex"); Mount Laurel Township Municipal Utilities Authority ("Mount Laurel"); Aqua New Jersey, Inc. ("Aqua"); and City of Elizabeth. Additionally ALJ Gertsman granted AARP participant status.

³ All other parties submitted letters of no objection to the stipulation.

Stipulation executed by the Parties. At the October 29, 2018 Agenda Meeting, the Board approved the Partial Stipulation.

Specifically, the Board approved a rate base of approximately, \$2.95 billion, which included the original cost less depreciation of Haddonfield and Shorelands in utility plant in service. Thus, the Board approved an overall rate increase of \$40,000,000 representing a 6.23% increase above Company revenues.

Lastly, the Board remanded the matter to ALJ Gertsman for a determination on the proposed acquisition adjustments.

STATEMENT OF FACTS

In its original filing, NJAWC requested rate base recognition of acquisition adjustments amounting to \$26,722,978 related to the acquisition of Shorelands, and \$1,798,369 related to the acquisition of Haddonfield.⁴ (PT-4 35:12-14).

Shorelands Acquisition

In April 2017, the Company purchased Shorelands for \$51,468,661 which exceeded the estimated value based on original cost minus depreciation by \$26,722,978. (PT-4 Page 37). Notwithstanding, the size of the premium, NJAWC is asking ratepayers to bear this cost.

⁴ The Company initially included an \$184,662 acquisition adjustment related to the acquisition of the former Roxiticus Water Company but withdrew the adjustment in subsequent updates to its filing.

NJAWC proposed that this large premium be included in rates and amortized over 40 years. Under such a proposal "customers will pay the Company a return of and a return on this excess investment and the annual amortization amount." (RC-1 31:6-7). This would translate to a revenue requirement of \$3,964,485 in the first year alone. (RC-1 31:6-7). To offset such costs, the Company claims that there will be savings due to avoided capital improvements.

Specifically, NJAWC's witness, Don Shields, testified that the Shorelands acquisition will allow the Company to optimize its water supply portfolio in that portion of Monmouth County. (PT-3 34:9-10). He claimed that integrating Shorelands into NJAWC's Coastal North system will allow NJAWC to avoid the costs associated with certain capital projects including:

- Eliminating the need to replace the Navy Tank (\$5M);
- Eliminating the need for the Dual Purpose High/Low Gradient Tank (\$3.5M); and
- Converting the Union Beach standpipe to ground storage (\$5M).

[(PT-3 34:10-16)].

In addition, integrating its existing system with the Shorelands systems will allow the Company to consolidate system

gradients, improve control over system flows and pressures, and improve operational efficiencies. (PT-3 34:17-35:4). Lastly, he noted that the Shorelands acquisition will allow it to defer or eliminate several other capital projects and that the avoided capital costs offset the premium paid for the acquisition. (PT-3 21:4-5; 35:5-36:10).

In contrast, Rate Counsel's witness, Mr. Howard J. Woods, testified that under this proposal "nothing in this analysis or the Company's testimonies that demonstrates that customers will actually see lower rates because of the acquisition or any of the avoided or deferred projects." (RC-1 31:18-20). Mr. Woods explained that despite the claimed avoided expenses, "conditions could change on any of a number of these projects that could cause the Company to revert" and decide that the avoided cost would once again be needed. (RC-1: 35:11-13). He further noted that the Company has not made a claim that this acquisition would decrease its overall investment budget. (RC-84 6:16-26). In fact the Company's discovery responses have indicated that its utility plant in service has been growing at 5.85%/year and has grown from approximately \$3 billion to \$5 billion in the last 9 years. (RC-84 6:20-22). In addition, over the last three years, the Company has invested over \$315 million/year in new utility plant facilities. (RC-84 6:23-26). Customers have

borne the cost of the revenue requirements associated with this growth.

In addition, Mr. Woods testified that Shorelands was not a troubled system and that there were no guarantees that projects included in the Company's analysis will not be undertaken or replaced by another capital project. (RC-1 37:18-20; 36:13-21). He noted that the deferred or avoided capital costs in the Company's analysis will result in a lower overall level of capital expenses as well. (RC-1 36:21-23).

Further, he stated that the Company in response to a data request, showed a revenue shortfall at present rates with the Shorelands acquisition adjustment included in rate base. (RC-84 7:6-10). This proposed revenue requirement represented a 23.35% increase for former Shorelands Water Company customers and was only necessitated by the high premium NJAWC paid for Shorelands. (RC-84 7:6-15).

Haddonfield Acquisition

On May 21, 2015, NJAWC, successfully purchased Haddonfield for \$28,500,000 through a competitive bidding process. There were two other bids received: \$19,050,000 by United Water Company and \$23,126,000 from Aqua New Jersey. The Company claimed that the valuation of Haddonfield based on original cost less depreciation was \$26,9110.89. (PT-20, Schedule SC-1, Page 1

of 31). Rate Counsel estimated that value at \$22,500,000 (RC-1 25:12-13).

Despite the added expense to existing customers, the Company maintained that it was entitled to the acquisition adjustment for several reasons. NJAWC's witness, David Forcinito, testified that that the Haddonfield acquisition allowed for the integration of the Haddonfield system with the Company's existing distribution system. (PT-13 3:7-8). Interconnecting the Haddonfield and NJAWC systems through multiple points of connections increased the resiliency and water quality of both systems. (PT-13 3:8-10). Prior to the acquisition, there were only two interconnections between the two systems. (PT-13 3:10-12). The full integration of both systems resulted in ten additional interconnections increasing the system redundancy and resiliency. (PT-13 3:12-17). In addition, integrating both systems resulted in the elimination of five dead-end water mains in Haddonfield and two in the NJAWC system. (PT-13 3:17-19).

NJAWC also contends that the Haddonfield acquisition allowed it to decommission Haddonfield's manually operated Centre Street water treatment plant which dated from the early 1900s, which was located in an unsecure area and was prone to flooding. (PT-13 4:3-8). The Company transferred the Centre

Street water treatment plant's water allocation to its existing water allocation permit. (PT-13 4:8-10). By decommissioning the Centre Street plant and transferring its water allocation, NJAWC argued that Haddonfield customers benefited by eliminating the need to upgrade the plant and NJAWC customers benefited because their combined water supply needs are being served by the Company's existing surrounding facilities at a lower per customer cost. (PT-13 4:12-17).

He also stated that customers benefited from the decommissioning of Haddonfield's 1899 vintage Cottage Avenue standpipe, which was located on a small lot between to residential homes. (PT-13 4:18-5:3). Decommissioning the standpipe improved water quality, eliminated a safety hazard and eliminated the need to recoat the tank. (PT-13 5:6-13).

On the other hand, Rate Counsel's witness, Mr. Woods, testified that the price NJAWC paid for Haddonfield created a burden for existing customers. Specifically, the proposal to acquire Haddonfield included: 1) an offer to maintain Haddonfield's existing water rates for a period of three years after the closing; 2) an offer to provide free water and sewer service to seven Haddonfield owned buildings and facilities; 3) a commitment to make an estimated \$6.5 million in capital improvements to the Haddonfield system within the first 12

months of closing; and 4) an estimated total of \$16 million in capital improvements in the five years after closing. (RC-1 18:19-19:6). Additionally, NJAWC has committed to continue a Senior Citizen subsidy of the Camden County Municipal Utilities Authority and to allow Haddonfield to retain revenues from cell antennae leases for a period of 10 years. (RC-1 19:6-9).

However, the revenues from Haddonfield customers were not adequate to satisfy the revenue requirement for the Haddonfield system. (RC-1 19:16-17). While NJAWC had invested "substantial sums" on improvements to the Haddonfield water and sewer systems since the systems were acquired, these additional investments have further increased the cost of providing service to Haddonfield; these costs were recognized in the Company's base rate increase. (RC-1 20:19-11). In the Company's previous rate case, Haddonfield was held out as a separate tariff group, which meant that revenue requirement associated with Haddonfield was excluded from the rates of other tariff groups. (RC-1 22:4-6). In contrast, in this proceeding, the Company's Cost of Service Study uses combined cost of providing water service from all service areas - including Haddonfield - to determine the statewide revenue requirement allocated to the various customer classes. (RC-1 22:9-12).

Mr. Woods noted that if the revenues generated by the

Haddonfield rate are insufficient to support Haddonfield's cost of service then other customers will be burdened with the excess revenue requirement.⁵ (RC-1 22:13-15). Further, the Company's "pre-acquisition customers will begin supporting the costs of the Haddonfield acquisition until Haddonfield's rates are brought to a level where revenues will support or exceed the local cost of providing service." (RC-1 22:16-1).

Lastly, Mr. Woods indicated that he was not aware of any short term synergies that benefit NJAWC's existing ratepayers as a result of the Haddonfield acquisition. (RC-21 23:1-3). Instead, significant benefits accrued to Haddonfield's ratepayers in the short-run. (RC-1 23:4-5).

Middlesex also offered testimony. Its witness Bruce O'Conner testified that he is not aware of any legislation, regulation or documented Board policy that would support the ratemaking treatment, for the acquisition premiums, sought by NJAC. (MWC-1 9:12-18). Additionally, Mr. O'Conner noted that there was no evidence in either direct testimony or discovery responses that indicates that these acquired systems could be considered "troubled" systems under their former ownership or that there were any marginal benefits to the customer justifying

⁵ The Company's Haddonfield water rates are set forth on Rate Schedule A-15 of the Company's tariff. The Company's other GMS customers water rates are set forth on Rate Schedules A-1, A-2, A-10 and A-16.

recognition of the acquisition adjustments. (MWC-1 9:18-21).

LEGAL ARGUMENT

NJAWC BEARS THE BURDEN OF PROOF TO SHOW THAT
ITS PROPOSED INCREASE IN RATES AND OTHER
REQUESTS ARE JUST AND REASONABLE.

The Board has been given broad authority in the general supervision, regulation and control over public utilities and has broad discretion in the exercise of that authority. N.J.S.A. 48:2-13; see e.g., In re Pub. Serv. Elec. and Gas Co.'s Rate Unbundling, Stranded Costs and Restructuring Filings, 167 N.J. 377 (2001). While exercising its authority to set just and reasonable rates, pursuant to N.J.S.A. 48:2-21, the Board must use its expertise in a flexible manner to respond to changing conditions while balancing complex and competing interests. Ibid. Thus, in reaching a decision with respect to rates, the Board must balance the competing interest of the ratepayers' needs to receive safe, adequate and proper service for a reasonable rate versus the utility's opportunity to earn a fair rate of return. See e.g., FPC v. Hope Natural Gas, 320 US 591 (1944); see generally, N.J.S.A. 48:2-21; N.J.S.A. 48:3-1.

In a rate proceeding, the utility bears the burden of proof on all elements for expenditures it seeks to pass-through in rates to its customers, including proving that its proposed rates are just and reasonable. In re Pub. Serv. Elec. and Gas

Co., 304 N.J. Super. 247, 265 (App. Div. 1997), certif. denied, 152 N.J. 12 (1997); In re Jersey Cent. Power & Light Co., 85 N.J. 520, 529 (1981); Pub. Serv. Coordinated Transp. v. State, 5 N.J. 196, 219 (1950).

To demonstrate that a requested rate increase is just and reasonable, "the utility must prove: (1) the value of its property or the rate base, (2) the amount of its expenses, including operations, income taxes, and depreciation, and (3) a fair rate of return to investors." In re N.J. Am. Water Co., 169 N.J. 181, 188 (2001) (citations omitted). The conventional procedure involves the establishment of a rate base reflecting the fair value of the utility's useful property, the calculation of allowable operating expenses, the computation of net income, the determination of a fair rate of return ("ROR") and the design of a proper rate schedule to produce reasonable revenues. In re Redi-Flo Corp., 76 N.J. 21, 28 (1978) (citations omitted).

The Company's rate base is the fair value of the property of the Company that is used and useful in public service. Pub. Serv., 5 N.J. at 217. This includes the value of any utility plant in service less depreciation that a utility has acquired. However, generally any premium paid for a property should not be placed in rate base and passed to ratepayers with a return. The Board will only recognize the premium paid to acquire a utility

"where it was proven that a specific and tangible benefit inured to ratepayers from the acquisition." I/M/O South Jersey Gas

Company, BPU Docket No. GR8508858, Order dated September 24, 1984. "The Company bears the burden of proof with regard to any benefits from its acquisition." Ibid.

Applying these principles, in I/M/O Elizabethtown Water Company, BPU Docket No. 8312-1072, Order dated September 24, 1984, the Board denied Elizabethtown Water Company's request for acquisition adjustments related to the acquisition of two water systems, Peapack and Gladstone, but recognized an acquisition adjustment for another system. The Board explained:

We 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. Re Elizabethtown Water Co., BPU Docket No. 802 76 (June 19, 1980). Reasonable incentives should be given for acquisition of small water companies which are typically undercapitalized and hard-pressed to provide safe, adequate, and proper service. Such is the intent of the Small Water Company Takeover Act, N.J.S.A. 58:11 59 et seq. In addition to the lack of a showing of a specific benefit, we have the additional factor that the system in question was acquired through competitive bidding between utilities which could only serve to enhance the purchase price in relation to original cost.

[Id. at 2.]

Similarly in I/M/O New Jersey American-Water Company, BPU

Docket No. WR98010015, Order dated April 16, 1999, the Board approved acquisition adjustments related to New Jersey-American's acquisition of several systems - including Sunbury Village and Aberdeen - finding that they were either acquired under the Small Water Take Over Act or that such adjustments had been agreed to in prior rate case stipulations that had been adopted by the Board. Id. at 15. The Board also approved acquisition adjustments resulting in the acquisition of several other systems finding that they were "small systems that will necessary benefit from the economies of scale and increased reliability in the provision of safe, adequate and proper service." Id. at 16.

In I/M/O the Petition of Long Beach Water System, BPU Docket No. 831-855, Order dated July 5, 1994, the Board held that the acquisition premium should be split between ratepayers and the company. The Board stated "that reasonable incentives must be given for the acquisition of the small water company, typically under-capitalized and unable to provide safe, adequate and proper service. Id. at 2. The Board explained that "[u]nder the circumstances of this case, with a well-established customer benefit, we believe that an equal sharing of the difference between purchase price and original cost is appropriate, and therefore would give recognition in rate base

to one-half of that difference, as an acquisition adjustment."

Ibid.

Here, Shorelands was not a troubled or small system as it was a well-run company that provided safe, adequate, and proper service to its customers. Yet, NJAWC paid more than double the original costs, \$26,722,978, for Shorelands. And now, NJAWC incorrectly, asks that its ratepayers bear the burden of this premium and pay a rate of return on that premium. Staff recommends that this request be denied.

The Shorelands acquisition allowed the Company to expand its service territory in northern Monmouth County, but the testimony indicates that there were little or no synergy savings resulting from the Shorelands acquisition. Moreover, NJAWC's claim that it will avoid capital costs is not supported by any tangible evidence. As Rate Counsel noted, NJAWC may very well still endeavor to complete the projects which it claims it will not, at a later date. As such, there are no guarantees that the Shorelands acquisition will result in lower overall capital costs to NJAWC's existing customers. Consequently, NJAWC failed to meet its burden to show that the Shorelands acquisition provides a benefit to ratepayers. More importantly, passing this large premium to ratepayers would strike an unfair balance between ratepayers and the Company because NJAWC would earn a

return on investment on a premium which does not tangibly benefit ratepayers. Staff therefore respectfully recommends that the ALJ and the Board reject NJAWC's request to include the Shorelands acquisition adjustment in rates.

Staff requests a similar result - denial - for the Haddonfield system. Haddonfield's purchase price of \$28,500,000 exceeds both Rate Counsel's and NJAWC's estimated value for Haddonfield. (RC-1 25:16-20). NJAWC acquired the system through a competitive bidding process. The bids received for Haddonfield reveal that other utilities did not place such a high premium on Haddonfield. In fact, the next highest bid was over \$5 million less than NJAWC's purchase price. Nonetheless, NJAWC now asks its ratepayers to bear the cost of that premium and a rate of return on that premium.

NJAWC did not identify Haddonfield as a troubled system until rebuttal and only in response to Rate Counsel and Middlesex's testimonies. NJAWC also could not cite any tangible benefits to existing ratepayers. The largest benefits cited in the record were with respect to the avoided capital of replacing or fixing existing Haddonfield facility, but this benefit only benefits former Haddonfield customers. In contrast, existing NJAWC customers are burdened by the acquisition because the cost of providing service to the Haddonfield system and the costs of

the acquisition are so high. Thus, the burden to ratepayers far exceeds any intangible benefits claimed by the Company and would strike an unjust balance between ratepayer interests and the Company. Staff respectfully recommends that the ALJ and the Board reject NJAWC's proposed plant acquisition adjustment for Haddonfield.

In sum, NJAWC has failed to meet its burden that the Shorelands and Haddonfield acquisitions for which NJAW paid a \$28,521,347 premium and a rate of return on that premium should be passed on to its ratepayers. NJAWC has now shown that there are tangible benefits to its ratepayers. On balance, NJAWC ratepayers' needs to receive safe, adequate and proper service at just and reasonable rates far exceed NJAWC's request for a \$28,521,347 acquisition premium and a rate of return on that premium. Stated differently, approving NJAWC's \$28,521,347 premium and a ROR on that premium would result in unjust and unreasonable rates. Accordingly, ALJ Gertsman and the Board should reject NJAWC's proposed plant acquisition adjustment for Shorelands and Haddonfield.

CONCLUSION

For the foregoing reasons, it is respectfully requested that Your Honor reject the Acquisition Adjustments as neither the Haddonfield system nor the Shorelands system qualify as a troubled water utility and do not provide tangible benefit to NJAWC's customers. Moreover, Your Honor should reject NJAWC's request because approving NJAWC's \$28,521,347 premium and a rate of return on that premium would result in unjust and unreasonable rates.

Respectfully Submitted,

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