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2/27/19

Honorable Jacob S. Gertsman
Administrative Law Judge
Office of Administrative Law
9 Quakerbridge Plaza
Mercerville, NJ 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 Sewer Service, Change in Depreciation Rates, and Other Tariff Modifications**
BPU Docket No. WR17090985
OAL Docket No. PUC 16279-2018S

Dear Judge Gertsman:

Enclosed in the referenced matter please find the original and one copy of Reply Brief of Petitioner New Jersey-American Water Company, Inc. relative to the issue of Acquisition Adjustments. Also enclosed is a stamped, self-addressed envelope so that a stamped copy may be returned to this office.

We are serving copies on all parties via email and via hard copy.

Thank you for your attention to this matter.

Respectfully,

COZEN O'CONNOR, PC

By: Ira G. Megdal

IGM/kn

cc: Service List (via email)

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

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

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I. INTRODUCTION

As shown in its Initial Brief, New Jersey-American Water¹ demonstrated through sworn testimony and other evidence that the Shorelands acquisition resulted in the avoidance and deferral of \$47.9 million in capital costs (“Avoided Capital Costs”) and significant operational efficiencies that would not have occurred but for the acquisition. The Avoided Capital Costs are \$20 million more than the proposed Shorelands Acquisition Adjustment. In response, Rate Counsel only challenged three of the 10 projects related to the Avoided Capital Costs. As to those three projects, Rate Counsel’s position is based on either speculative opinions or conclusory statements completely contrary to the record. BPU Staff and Middlesex (together with Rate Counsel, the “Opposing Parties”) rely on Rate Counsel’s insufficient evidence along with speculative legal theories but present no evidence of their own. For Haddonfield, New Jersey-American Water demonstrated through sworn testimony and evidence that the acquisition resulted in significant operational efficiencies benefitting existing customers. However, the Opposing Parties focus on whether Haddonfield was a troubled system, which is not the standard, and contend without support that the acquisition did not benefit existing customers when the evidence shows it did.

None of Opposing Parties’ arguments withstand scrutiny. Their characterization of New Jersey-American Water’s evidence as speculative is incorrect and unsupported by and contrary to the actual evidence. The Opposing Parties’ attempts to create a new standard for recognition of the Acquisition Adjustment also fails. Whether Shorelands or Haddonfield was a troubled system at the time of the acquisition is not relevant, as the BPU has never limited acquisition

¹ New Jersey-American Water uses the defined terms from the Initial Brief, unless otherwise stated.

adjustments to that circumstance. Nor is New Jersey-American Water's future capital spending dispositive of whether the acquisitions resulted in net benefits to customers warranting rate base recognition of the Acquisition Adjustment.

Accordingly, the Honorable ALJ and BPU should conclude that New Jersey-American Water demonstrated by a preponderance of the evidence that it is appropriate to recognize the full Acquisition Adjustment in rate base. *See Petition of Pub. Serv. Elec. & Gas Co.*, 304 N.J. Super. 247, 274, 699 A.2d 1224, 1237-38 (App. Div. 1997) ("a party raising a defense to the moving party's claim bears the burden of coming forward with evidence to support that defense").

II. ARGUMENT

A. New Jersey-American Water Has Proven by a Preponderance of the Evidence that the Acquisition Adjustment Should Be Recognized in Rate Base

New Jersey-American Water has introduced substantial evidence demonstrating that the Shorelands acquisition has resulted in Avoided Capital Costs, and the Haddonfield acquisition has provided operational efficiencies, and that each Avoided Capital Cost and operational efficiency has provided specific benefits to customers. The Opposing Parties have utterly failed to refute or rebut that evidence. In fact, they have silently conceded the existence of Avoided Capital Costs in an amount sufficient to support the entire Acquisition Adjustment. Therefore, recognition of the Acquisition Adjustment in rate base is supported not just by a preponderance of the evidence but by all of the evidence.

A close examination of the record reveals that the Opposing Parties do not dispute the evidence of Avoided Capital Costs resulting from the Shorelands acquisition. Instead, Rate Counsel claims that New Jersey-American Water did not "make a commitment" to avoid or defer

such costs despite uncontroverted testimony by witnesses under oath that it would.² Staff reiterates this claim, saying “NJAWC may very well still endeavor to complete the projects...at a later date.”³ However, the Opposing Parties failed to identify or produce a scintilla of evidence in this record that any of the avoided or deferred projects are moving ahead—there are no engineering drawings or specifications; no proposal documents; no contracts; no permit applications to any state, county or municipal entity; no land use applications; and a complete absence of any proof that New Jersey-American Water has taken any other concrete step to advance any of the projects. On the contrary, New Jersey-American Water has stated, on the record, under oath, that these projects are no longer part of its capital plans and will not be built **because of the acquisition of the Shorelands system**. The Opposing Parties produced nothing to rebut that evidence.

It is one thing to fail to refute the evidence. It is quite another to act as if there is none. Indeed, Rate Counsel not only ignores the record, but also advocates for a completely new and harmful test that would require New Jersey-American Water to cap total investments throughout all service territories, as well as show that overall customer rates would decrease, for New Jersey-American Water to prove net customer benefits from the Shorelands acquisition.⁴ Rate Counsel also claims that the cost of needed improvements to the Shorelands system and capital integration costs were not considered by New Jersey-American Water.⁵ This is incorrect.

The Opposing Parties’ objections to the Haddonfield acquisition adjustment are similarly unsupported and flawed, as they primarily focus on whether Haddonfield was a troubled system.

² Rate Counsel Initial Brief at p. 9.

³ Staff Initial Brief at p. 17.

⁴ Rate Counsel Initial Brief at pp. 10-11.

⁵ *Id.*

New Jersey-American Water never made a troubled-system argument in its case in chief, as that is not the standard that the BPU articulated in *Elizabethtown* or reaffirmed in *Howell*. In fact, Rate Counsel Witness Mr. Woods first raised the issue in rebuttal testimony as one of his kettle of red herrings.⁶

The Haddonfield acquisition adjustment should be recognized in rate base because of the proven operational efficiencies stemming from the acquisition—specific, tangible benefits to existing New Jersey-American Water customers. None of the Opposing Parties even acknowledge, let alone dispute, these efficiencies in their Initial Briefs, but the evidence in the record is not so silent. As set forth in New Jersey-American Water’s Initial Brief, New Jersey-American Water has demonstrated under *Elizabethtown* and *Howell* that the acquisitions result in specific benefits to all customers with no negative impact on legacy customers. Thus, the Acquisition Adjustment should be afforded rate base treatment.

1. New Jersey-American Water Demonstrated Through Witnesses Testifying Under Oath that the Shorelands Acquisition Resulted in \$47.9 Million in Avoided Capital Costs

New Jersey-American Water demonstrated through sworn testimony, subject to cross-examination, that the Shorelands acquisition resulted in \$47.9 million in Avoided Capital Costs. The Opposing Parties did not come forward with any evidence that New Jersey-American Water did not in fact plan the projects before the acquisition, and avoid or defer them thereafter. The Opposing Parties’ primary rebuttal is that New Jersey-American Water’s avoidance and deferral claims were “speculative.” Not only is this characterization of New Jersey-American Water’s evidence incorrect; it is also unsupported by and contrary to the evidence of record.

⁶ RC-1, Woods Direct at 23:19-21.

Internal and external studies containing thoughtful, thorough analysis, as well as undisputed testimony, supported the original plan and need for each project before the acquisition. Further, Donald C. Shields, the Vice President and Director of Engineering for New Jersey-American Water, testified that the projects would be avoided or deferred thereafter:

- The Shorelands acquisition “*allows NJAWC to avoid capital projects . . . including the following:*”
 - *Eliminating the need to* replace the Navy Tank (\$5m)
 - *Eliminating the need for* the Dual Purpose High/Low Gradient Tank (\$3.5m)
 - *Converting the Union Beach standpipe to ground storage (\$5m)*.⁷
- “[T]he Shorelands acquisition *has eliminated the need for* replacement of five pressure reducing valves (“PRVs”) in the Aberdeen zone and three PRVs in the Middletown zone, with a cumulative avoided cost of \$3.3 million.”⁸
- “Two other projects *have also been eliminated:* this acquisition has increased NJAWC’s ability to leverage its Aquifer Storage and Recovery (“ASR”) strategy, *avoiding* the costs for two new Englishtown wells (\$3.5 million).”⁹
- “NJAWC *has been able to eliminate* approximately 4 miles of a planned source of supply main (the Raritan-Middlesex main) with avoided costs of approximately \$10 million.”¹⁰
- “One planned source of supply capital project *can be deferred* for at least 5 years: the project comprises six ASR wells with projected capital costs of \$14.9 million. The other project *defers the need for* certain resiliency improvements at the Newman Springs pump station with projected capital costs of \$4 million.”¹¹
- “All of these projects are *projects that would otherwise need to be built, or built sooner, or done more expensively but for this transaction,* and those costs would have been prudently incurred and recovered from customers in rates if not reduced,

⁷ P-5, Shields’ Direct at 34:11-16.

⁸ P-5, Shields’ Direct at 35:5-8.

⁹ P-5, Shields’ Direct at 35:9-11.

¹⁰ P-5, Shields’ Direct at 35:11-14.

¹¹ P-5, Shields’ Direct at 35:18-36:2.

deferred or avoided, so *customers will experience* a long-term overall benefit in their rates, without adversely impacting water service to either current Shorelands or NJAWC customers.”¹²

In contrast, the arguments of the Opposing Parties are based on hypothetical “facts” and spurious legal theories, which should be disregarded for three primary reasons.

First, the Opposing Parties have completely failed to rebut New Jersey-American Water’s evidence of Avoided Capital Costs. Although Rate Counsel argued for the removal of the Navy Tank, Englishtown Wells and NSPS projects from the list of Avoided Capital Costs, the Opposing Parties were *completely silent on the other seven avoided/deferred projects* worth \$36.7 million in savings. The uncontested Avoided Capital Costs of \$36.7 million is \$10 million more than the \$26.7 million Shorelands acquisition adjustment and \$8 million more than the \$28.5 million Acquisition Adjustment for Shorelands and Haddonfield combined. Thus, the Opposing Parties have tacitly *conceded* that the acquisitions have produced customer benefits substantially exceeding the requested Acquisition Adjustment.

Further, Rate Counsel’s removal of the Navy Tank, Englishtown Wells and NSPS projects from the list of Avoided Capital Costs is not supported by any substantial evidence. Rate Counsel admits that the sole purpose of Mr. Woods’ testimony was to “illustrate[] the sensitivity of the analysis offered by the Company”¹³ by arbitrarily changing the inputs to New Jersey-American Water’s calculation of the net present value of the Avoided Capital Costs. Mr. Woods attempted to bootstrap this “sensitivity” test into the realm of analysis by making reference to specific project details, but he offered no expert opinion or factual evidence that

¹² P-5, Shields’ Direct at 36:3-8.

¹³ Rate Counsel Initial Brief at p. 10.

could support a finding that New Jersey-American Water will actually move forward with any of these projects.¹⁴ In fact, no such proof exists, and New Jersey-American Water witnesses testified otherwise. Therefore, the actual evidence of record supports only one conclusion: that the Shorelands acquisition allowed New Jersey-American Water to avoid or defer substantial capital costs with respect to the Navy Tank, Englishtown Wells and NSPS projects.

Second, the standard advocated by Rate Counsel and BPU Staff, if adopted by the BPU, would impose unprecedented, detrimental constraints on water utilities' ability to invest in infrastructure when and as needed. The BPU has never required that a public utility limit its capital spending before an acquisition adjustment can be recognized in rate base, as Rate Counsel and BPU Staff would have the BPU require here. To the contrary, when the BPU allowed the acquisition adjustment for the Howell System in *Howell*, the BPU found that the acquisition benefitted New Jersey-American Water customers in part because it resulted in \$12.5 million in avoided costs: it did not require New Jersey-American Water to restrict future capital spending.¹⁵

Rate Counsel's and BPU Staff's novel proposal would be contrary to good public policy and good stewardship in a myriad of ways. For instance, such a standard would actually punish customers by preventing New Jersey-American Water from making the necessary capital

¹⁴ Rate Counsel argued that New Jersey-American Water will need to replace the Navy Tank by 2023 based on a 72-year depreciation rate for storage tanks generally. See Rate Counsel Initial Brief at p. 10. However, Mr. Woods admitted that he did not know what the condition of the tank is, and that he had not even visited it before offering his opinion. See Hearing Trans., June 11, 2018 at 143:6-144:14. Further, Rate Counsel failed to reconcile its position with a fact that no party disputed: engineered coating systems can extend the life of a tank by over 50 years. A fact that, had it been applied by Mr. Woods, would change his estimated retirement date of the Navy Tank from 2023 to 2068—a date well outside the date range used by New Jersey-American Water in its net present value analysis. See P-65.

¹⁵ *In re New Jersey American Water Company*, 193 P.U.R. 4th 30, 1999 WL 615854 *13 (N.J.B.P.U. 1999) ("*Howell*").

investments to provide safe, reliable and adequate public utility service when and where needed. Such a proposal would also bind future Boards of Public Utilities by creating an artificial, arbitrary spending limit that would eviscerate the Board's role in determining whether or not a utility has proven its investments are prudent before recovering those expenses from customers. New Jersey-American Water's overall capital spending is simply not relevant to the question whether the Shorelands acquisition resulted in specific, tangible benefits to customers. The Opposing Parties can dispute recovery of future capital investments in future base rate cases.

Third, New Jersey-American Water did not, as Rate Counsel contends, improperly exclude costs related to the Shorelands acquisition from its customer benefit analysis. To the contrary, Mr. Shields explained in response to Rate Counsel's data request that the revenues generated by former Shorelands customers will be sufficient to cover such costs.¹⁶ Rate Counsel also ignores the substantial operational synergies that have already inured to the benefit of customers through the consolidated operation of the Shorelands and New Jersey-American Water systems and are already reflected in the lower-than-otherwise O&M expenses included in the stipulation of settlement approved by the BPU in the underlying case. In fact, the attainment of new customers organically or by acquisition helps drive down operating costs. New Jersey-American Water has acquired various systems and customers over the past eight years, reducing operating costs from \$327 per customer to \$305 per customer for an annual savings of \$14,000,000 on a pro-forma basis.¹⁷

New Jersey-American Water demonstrated through substantial, credible, factual evidence that the Shorelands acquisition resulted in specific, tangible benefits to customers and thus, that

¹⁶ P-89.

¹⁷ P-22, Shroba Rebuttal at 2:8-10.

the Acquisition Adjustment should be allowed. In contrast, while the Opposing Parties indulge in speculation, they offer no evidentiary proof to support their positions. A side-by-side comparison of the actual evidence that New Jersey-American Water submitted on the one hand and the lack of evidence that the Opposing Parties submitted on the other demonstrates that New Jersey-American Water met its burden and the Opposing Parties failed to rebut it:

<u>Project</u>	<u>NJAWC Proofs</u>	<u>Other Party Proofs</u>	<u>Proposed Finding</u>
<u>Navy Tank</u>	<ul style="list-style-type: none"> • 2014 CPS recommended that NJAWC replace the Navy Tank with an elevated tank at a cost of \$3.7 million.¹⁸ • CPS observed that because the tank is not elevated, it is not optimal for fire protection or flow equalization during peak days.¹⁹ • Mr. Shields: gain of Shorelands' elevated tanks coupled with gradient alignment eliminates need to replace Navy Tank.²⁰ 	<ul style="list-style-type: none"> • Mr. Woods: speculated as to what would happen if NJAWC had to replace tank in 2023 based on 72-year depreciation rate for storage tanks generally.²¹ 	<ul style="list-style-type: none"> • Shorelands acquisition resulted in specific, tangible benefits to customers, including avoiding construction of \$3.7 million Navy Tank.

¹⁸ P-7, Shields Rebuttal at 22:15-16; P-8, Tomac Direct at Schedule FXS-1; P-86 at RCR-E-32 Attachment, pp. 1, 4 of 52.

¹⁹ P-7, Shields Rebuttal at 22:13-15; P-86 at RCR-E-32 Attachment, p. 3 of 52.

²⁰ P-5, Shields Direct at 34:17-35:1; P-7, Shields Rebuttal at 22:17-18.

²¹ Rate Counsel Initial Brief at 10.

<u>Project</u>	<u>NJAWC Proofs</u>	<u>Other Party Proofs</u>	<u>Proposed Finding</u>
	<ul style="list-style-type: none"> • Mr. Shields: engineered tank coating can extend life of a tank by over 50 years, in some cases.²² 	<ul style="list-style-type: none"> • Mr. Woods: did not inspect the tank.²³ 	<ul style="list-style-type: none"> •
<u>Dual Purpose Tank</u>	<ul style="list-style-type: none"> • August 21, 2013 internal memo: tank recommended to mitigate recurring problems of Aberdeen Low gradient due to pressure surges caused by PRVs.²⁴ • Mr. Keane: pre-acquisition, Aberdeen low-pressure gradient had no tank storage to handle pressure surges resulting in higher than average main breaks.²⁵ • Mr. Shields and Mr. Keane: construction of \$3.5 million tank eliminated due to acquisition.²⁶ 		Shorelands acquisition resulted in specific, tangible benefits to customers, including avoiding construction of \$3.5 million Dual Purpose Tank.

²² P-65.

²³ Hearing Trans., June 11, 2018 at 143:6-144:14.

²⁴ P-86 at RCR-E-32 Attachment, p. 33 of 52.

²⁵ P-23, Keane Direct, 2:21-3:12; P-86 at RCR-E-32 Attachment, pp. 1, 30 of 52.

²⁶ P-5, Shields Direct at 34:15-35:4; P-23 at Keane Direct, 3:3-7.

<u>Project</u>	<u>NJAWC Proofs</u>	<u>Other Party Proofs</u>	<u>Proposed Finding</u>
<u>Union Beach Standpipe</u>	<ul style="list-style-type: none"> • Mr. Shields: pre-acquisition, insufficient elevated storage at Middletown gradient.²⁷ • Integration of two system gradients and additional Shorelands' water storage and allocation eliminate need to convert standpipe saving \$5 million.²⁸ 		Shorelands acquisition resulted in specific, tangible benefits to customers, including savings of \$5 million due to avoiding conversion of Union Beach Standpipe.
<u>PRVs</u>	<ul style="list-style-type: none"> • Mr. Shields: additional Shorelands' storage tanks eliminate need to replace five PRVs in Aberdeen zone and three PRVs in Middletown zone saving \$3.3 million.²⁹ 		Shorelands acquisition resulted in specific, tangible benefits to customers, including avoiding \$3.3 million replacement of PRVs.
<u>Englishtown Wells</u>	<ul style="list-style-type: none"> • 2014 CPS: identified need to construct two Englishtown Wells due to deterioration of several existing wells causing a supply deficit in Lakewood gradient.³⁰ • Shorelands' groundwater eliminated need for \$3.5 million project.³¹ 	<ul style="list-style-type: none"> • Mr. Woods: NJAWC could decide to build wells on schedule.³² 	Shorelands acquisition resulted in specific, tangible benefits to customers, including avoiding \$3.5 million construction of Englishtown Wells.

²⁷ P-5, Shields Direct at 34:18-19; P-86 at RCR-E-32 Attachment, p. 2 of 52.

²⁸ P-5, Shields Direct at 34:17-35:4.

²⁹ P-5, Shields Direct at 34:17-35:4.

³⁰ P-86 at RCR-E-32 Attachment, p. 5 of 52.

³¹ P-7, Shields Rebuttal at 24:3-16.

³² RC-1, Woods Direct at 35:14-17.

<u>Project</u>	<u>NJAWC Proofs</u>	<u>Other Party Proofs</u>	<u>Proposed Finding</u>
<u>Raritan-Middlesex Pipeline</u>	<ul style="list-style-type: none"> • As early as 2013, plans to build a new pipeline to provide long-term water supply to Coastal North from Raritan Basin.³³ • Integration of two systems allowed NJAWC to shorten original pipeline by 4 miles lowering project cost by about \$10 million.³⁴ 		Shorelands acquisition resulted in specific, tangible benefits to customers, including shortening the Raritan-Middlesex Pipeline and lowering project cost by about \$10 million.
<u>ASR Wells</u>	<ul style="list-style-type: none"> • Pre-acquisition, NJAWC planned to construct ASR wells to address capacity issues in Coastal North during summer.³⁵ • Additional Shorelands' storage allows delay of \$14.9 million project for at least five years.³⁶ 		Shorelands acquisition resulted in specific, tangible benefits to customers, including delay of \$14.9 million ASR wells project for at least 5 years.
<u>Newman Springs Pump Station</u>	<ul style="list-style-type: none"> • In 2016 after Superstorm Sandy threatened resiliency of station, Kleinfelder recommended several site protection measures.³⁷ • Mr. Shields: integration of Shorelands' elevated tanks allows deferral of \$4 million in capital.³⁸ 	<ul style="list-style-type: none"> • Mr. Woods: speculated as to what would happen if NJAWC decided not to delay the NSPS projects.³⁹ 	Shorelands acquisition resulted in specific, tangible benefits to customers, including delay of \$4 million Newman Springs Pump Station projects.

³³ P-86 at RCR-E-32 Attachment, p. 38-40 of 52.

³⁴ P-85, RCR-E-31; P-8, Tomac Direct at FXS-1; P-5, Shields Direct at 35:11-14.

³⁵ P-86 at RCR-E-32 Attachment, pp. 7 of 52.

³⁶ P-5, Shields Direct at 35:19-20; P-86 at RCR-E-32 Attachment, pp. 1, 7-16 of 52.

³⁷ P-86 at RCR-E-32 Attachment, p. 17-28 of 52.

³⁸ P-5, Shields Direct at 35:20-36:2.

³⁹ RC-1, Woods Direct at 35:17-36:2.

The above comparison makes it abundantly clear that the Opposing Parties have failed to refute New Jersey-American Water's evidence that the Shorelands acquisition resulted in \$47.9 million in Avoided Capital Costs and that their characterization of New Jersey-American Water's evidence as speculative is simply incorrect. See *In re Petition of New Jersey Am. Water Co., for an Increase in Rates for Water & Sewer Serv. & Other Tariff Modifications*, 169 N.J. 181, 188–89, 777 A.2d 46, 50 (2001) (“The Legislature has authorized courts expressly to ‘review any order of the board and to set aside such order in whole or in part when it clearly appears that there was no evidence before the board to support the same reasonably or that the same was without jurisdiction of the board.’”), citing *N.J.S.A.* 48:2–46.

2. The Haddonfield Acquisition Adjustment Should Be Recognized in Rate Base Because of the Operational Efficiencies Resulting from the Acquisition

The Opposing Parties' objections to the Haddonfield adjustment focus primarily on whether Haddonfield was a troubled system. Aside from the fact that this is not the standard (as will be discussed below), New Jersey-American Water never made a troubled-system argument in its case in chief. None of the Opposing Parties can cite to any direct testimony by New Jersey-American Water that Haddonfield was troubled. Indeed, Mr. Woods was the first witness to use the term “troubled system” and testified that Haddonfield was not troubled at all.⁴⁰ Ms. Cuthbert, New Jersey-American Water's witness on Haddonfield's OCLD, simply responded to Mr. Woods' testimony to demonstrate that he was incorrect.⁴¹ Specifically, Ms. Cuthbert testified that Haddonfield was a troubled system in her opinion because at the time of the

⁴⁰ Hearing Trans., June 11, 2018 at 134:24-135:3.

⁴¹ P-37, Cuthbert Rebuttal at 3:1-5:21.

acquisition it met four of the five emergent conditions identified under the 2015 Water Infrastructure Protection Act that would classify a utility as being a serious risk to the integrity of drinking water and the environment.⁴²

The Haddonfield acquisition adjustment should be recognized in rate base because New Jersey-American Water demonstrated by a preponderance of the evidence that the acquisition resulted in specific, tangible benefits to all customers, including operational efficiencies and other customer benefits; no Opposing Party provided any evidence to the contrary. Rate Counsel claims that New Jersey-American Water did not present the efficiencies in dollars and cents but, like Mr. Woods' "troubled system" argument, this is not the standard.⁴³ The BPU has never required a public utility to measure the benefits resulting from an acquisition monetarily. In *Elizabethtown*, the BPU said that a specific benefit could be "the acquiring of needed facilities which benefit the entire system."⁴⁴ In *Howell*, the BPU recognized the "remediation of supply deficiency" was a specific, tangible benefit to customers resulting from the Howell System acquisition that, in addition to the \$12.5 million in avoided capital costs, warranted rate base treatment of the adjustment.⁴⁵

Here, New Jersey-American Water demonstrated that the Haddonfield acquisition resulted in operational synergies benefiting both acquired and existing customers—a specific and tangible benefit that customers already enjoy. Rate Counsel's contention that New Jersey-

⁴² *Id.*

⁴³ Rate Counsel Initial Brief at p. 12.

⁴⁴ *In re Elizabethtown Water Company*, 62 PUR 4th 613, 614 (NJ 1984) (overruled on other grounds) (holding the BPU would "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") ("*Elizabethtown*").

⁴⁵ *Howell*, 1999 WL 615854 at *13.

American Water asserted only one benefit to existing customers is incorrect.⁴⁶ Other specific, tangible benefits, as supported by substantial record evidence, include:

- The additional interconnections between the two systems increased the redundancy of supply feeding Haddonfield and the ability of both systems to withstand operational disruptions such as main breaks, *making both systems more resilient.*⁴⁷
- The elimination of dead-end water mains in both Haddonfield's and New Jersey-American Water's system provides benefits to all customers by *creating continuous flow, reducing water age and improving water quality.*⁴⁸
- The new Atlantic Avenue Lift Station benefits all customers because it *protects the environment in New Jersey-American Water's service area* in Water Supply Critical Area 2, as well as the quality of the watershed of a major river of the State of New Jersey.⁴⁹
- The transfer of the Haddonfield allocations to New Jersey-American Water benefits acquired and existing customers because *the allocation can be used across multiple facilities and over a broader service area* rather than being limited to Haddonfield.⁵⁰
- The Haddonfield system also adds to New Jersey-American Water's economies of scale, creating additional value for all customers by *reducing per-customer operating costs.*⁵¹

The Opposing Parties presented no credible evidence in response to this evidence, and, accordingly, the only conclusion supported by substantial evidence is that New Jersey-American Water demonstrated that the Haddonfield acquisition resulted in specific, tangible benefits to customers and thus, the Acquisition Adjustment should be allowed.

⁴⁶ Rate Counsel Initial Brief at p. 12.

⁴⁷ P-24, Forcinito Direct at 3:14-17.

⁴⁸ *Id.* at 3:17-22.

⁴⁹ P-37, Cuthbert Rebuttal at 6:15-7:4.

⁵⁰ P-97, Response to RCR-E-90; P-37, Cuthbert Rebuttal at 6:3-12.

⁵¹ P-24, Forcinito Direct at 7:4-11.

B. Howell Sets Forth the BPU Policy on Acquisition Adjustments; The Policy is Not Limited to Troubled Systems

The Opposing Parties' mischaracterization of the record evidence is only exacerbated by their failure to discuss *Howell* in any meaningful way. The acquisition adjustment for the Howell System that the BPU allowed in *Howell* is directly analogous to the Shorelands acquisition adjustment that New Jersey-American Water seeks here with one exception: all of the specific, tangible benefits resulting from the Shorelands acquisition flow directly to New Jersey-American Water's customers, and there is no record evidence that any of these benefits solely benefit New Jersey-American Water's shareholders. Further, the "enhanced ability to address water supply issues" that supported the Howell System adjustment in *Howell* are like those resulting from the Haddonfield acquisition here, and all of the specific, tangible benefits identified in the record flow to customers.⁵² Further, unlike the record in *Howell*, all of the specific, tangible benefits from the Avoided Capital Costs flow to customers. Therefore, no allocation or apportionment of benefits from avoided capital needs to be made in this case. And because 100% of the benefits go to customers, New Jersey-American Water has demonstrated that rate base recognition of all of the Avoided Capital Costs is proper. The other Board Orders that the Opposing Parties rely upon are either irrelevant or demonstrate precisely why the Acquisition Adjustment should be recognized, notwithstanding the way they chose to characterize them.

1. The Acquisition Adjustment Is Consistent with *Howell*

The BPU set forth a clear policy in *Howell*: acquisitions that result in "specific benefits to ratepayers . . . warrant rate treatment."⁵³ The BPU's policy should not be ignored or changed

⁵² *Howell*, 1999 WL 615854 at *13.

⁵³ *Id.* at *12.

through the instant proceeding. A decision should be based on an application of the *Howell* policy to the substantial record evidence, and New Jersey-American Water should clearly prevail based on the evidence.

In *Howell*, the BPU allowed the Howell System adjustment, finding “that local and regional benefits resulted from the Howell acquisition”, including “an enhanced ability to address water supply issues in Ocean and Monmouth Counties and \$12.5 million in avoided costs.”⁵⁴ The BPU adopted the ALJ’s findings, modifying them in part by ordering a sharing of costs between customers and shareholders. Here, the Opposing Parties presented no evidence that shareholders benefit from the acquisitions at all, let alone comparatively more so than customers. Thus, there is no support for any apportionment of the Acquisition Adjustment like the one that the BPU ordered in *Howell*.

With respect to the customer benefits resulting from the Howell acquisition, the ALJ found, and the BPU agreed:

The acquisition will enable the company to interconnect the Monmouth, Lakewood and Barrier Island systems, which will be advantageous from an operational standpoint. Further, this *interconnection will insure increased system reliability to all customers of these systems*, including the new customers acquired in the Howell acquisition. Further, I note that the company has demonstrated that this purchase will result in *the avoidance of approximately \$12.5 million in capital improvement costs which the Company would otherwise need to spend to address water supply issues* in the existing Monmouth and Ocean service areas.⁵⁵

Here, New Jersey-American Water demonstrated that the Shorelands acquisition results “in the avoidance [or deferral] of approximately [\$47.9] million in capital improvement costs which the

⁵⁴ *Id.* at *13.

⁵⁵ *I/M/O Petition of New Jersey-American Water Company, Inc.*, 1999 WL 89102, BPU Docket No. WR98010015, OAL Docket No. PUC 699-98 (Initial Decision Jan. 5, 1999).

Company would otherwise need to spend to address water supply issues in the existing [Coastal North] service area[.]”⁵⁶ Likewise, the Haddonfield acquisition is advantageous to customers “from an operational standpoint.”⁵⁷

Further, “the degree to which these benefits accrue to all ratepayers” is easily measured on the record.⁵⁸ New Jersey-American Water demonstrated that all—100%—of the benefits resulting from the acquisitions flow directly to customers. Avoided and deferred capital costs result in a more efficient use of capital and lower rates for customers.⁵⁹ Further, the benefits resulting from the acquisitions outweigh the costs as the \$47.9 million in Avoided Capital Costs related to Shorelands exceed the adjustments for Shorelands and Haddonfield, combined. Finally, the acquisitions achieve the BPU’s goal of consolidating water systems and regionalizing water supply facilities, thus benefitting all customers.⁶⁰

In arguing that New Jersey-American Water has not met its burden of proof, Rate Counsel incredibly fails to even cite *Howell*, and Middlesex only references (and mischaracterizes) it in a footnote. Other than New Jersey-American Water, BPU Staff is the only other party to discuss *Howell*. And even then, Staff briefed only the portion dealing with small water systems—systems acquired under the Small Water Take Over Act and adjustments agreed-to in prior rate case stipulations—none of which have any relevance to the Acquisition Adjustment here. Staff’s brief is silent about the single most salient point in *Howell* -- which is the acquisition adjustment for Howell. Recognition of the Acquisition Adjustment in rate base here is consistent with the holding in *Howell*.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ P-23, Keane Direct at 5:2-19.

⁶⁰ *Howell*, 1999 WL 615854 at *10.

2. Recognition of Acquisition Adjustments in Rate Base Is Not Limited to Distressed or Small Water Systems

Despite the Opposing Parties' positions to the contrary, the BPU did not say in *Howell* that the policy only applies to distressed or small water systems, or is otherwise an extraordinary remedy to be applied according to only the most exacting standards. *Howell* allowed an acquisition adjustment for the Howell System, which was not small or distressed at all, and in so doing specifically rejected the argument advanced by Rate Counsel and Middlesex:

The Advocate challenged these acquisition adjustments based on its perception that the only benefits justifying recognition of acquisition adjustments are primarily those that result from state mandated takeovers. The Board finds the Advocate's narrow view of permissible acquisition adjustments to be contrary to the public interest. The Advocate's limited policy would discourage water utilities from acquiring systems in the absence of a state mandate.⁶¹

The BPU also did not, as Rate Counsel incorrectly contends, limit the policy to distressed systems in *Elizabethtown*. In *Elizabethtown*, the BPU held it "will continue to recognize the appropriateness of acquisition adjustments where a specific benefit can be shown, such as the acquiring of needed facilities that benefit the entire system."⁶² In neither case did the Board choose to articulate a more precise measure of benefits than "specific" or "tangible." And in both cases, the Board affirmed a policy in favor of acquisitions to further policy goals such as regionalization, resiliency and greater economies of scope and scale.

Limiting acquisition adjustments to only systems that have already become non-viable in this way is the opposite of, to use Rate Counsel's phrase, "good public policy." Similarly, the ceiling on a purchase price is not in any way "unlimited" as Rate Counsel suggests. A purchaser will not simply pay an unsupported price for a system, regardless of its condition or the

⁶¹ *Howell*, 1999 WL 615854 at *10.

⁶² *Elizabethtown*, 62 P.U.R. 4th at 614.

most of the alleged benefits related to back-office savings and do not compare in scale or scope to the benefits that New Jersey-American Water has proven in this case.

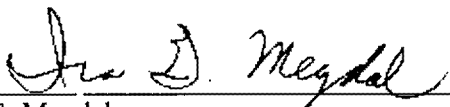
Further, the holding in *In the Matter of the Petition of Long Beach Water System*, BPU Docket No. 8310-855, OAL Docket No. 8875-83 (Order July 5, 1984), relied upon by BPU Staff, is distinguishable as it involved an acquisition where the purchaser paid less than the OCLD. In an unprecedented decision, the BPU allowed the utility to add to rate base an adjustment equal to 50% of the difference between the amount paid and the OCLD which was a negative value. This case clearly does not apply to the facts here. Finally, Middlesex cites to *In the Matter of Aqua New Jersey, Inc.*, BPU Docket No. WR05121022, OAL Docket No. PUC 3338-06 (Board Order Jan. 17, 2007), but that Order approved a Stipulation of Settlement where the parties agreed to an acquisition adjustment, so there was no dispute.

III. CONCLUSION

For the reasons set forth above, New Jersey-American Water respectfully requests that the Honorable ALJ allow New Jersey-American Water to recognize a \$28,536,369 Acquisition Adjustment in rate base in connection with the purchase of Shorelands and Haddonfield. New Jersey-American Water has satisfied its burden of proof and demonstrated that rate base recognition of the Acquisition Adjustment in its entirety is warranted. Allowance of the Acquisition Adjustment is consistent with BPU policy and precedent, consistent with sound rate setting principles, and otherwise in the public interest. New Jersey-American Water has demonstrated under *Elizabethtown* and *Howell*, and by a preponderance of the evidence, that the purchase price for both acquisitions was reasonable and that both acquisitions provide specific benefits to customers with no resultant negative impact on legacy customers. The Opposing

Parties have failed to present substantial record evidence to overcome the evidence presented by New Jersey-American Water.

Respectfully submitted,

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Date: February 25, 2019