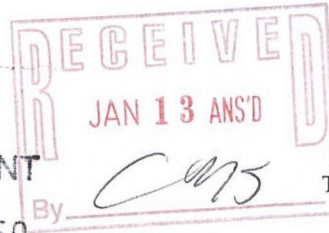




Cullen | Dykman
 SPECIALIZED
 CASE MANAGEMENT



Cullen and Dykman LLP
 One Riverfront Plaza
 Newark, NJ 07102
 T: 973.849.0220 | F: 973.849.2020

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VIA HAND DELIVERY

Honorable Jacob S. Gertsman
 Administrative Law Judge
 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 – Acquisition Adjustment Remand
 OAL Docket No. PUC 16279-2018S
 Agency Docket No. ~~WRM709085~~ *WR17090985*

Dear Judge Gertsman:

Enclosed for filing in the above-referenced matter, please find the Summation Brief of Petitioner New Jersey-American Water, Inc. (the “Company”). Also enclosed, please find a copy of the Company’s Summation Brief, which we respectfully request be time-stamped and returned to us in the enclosed pre-paid Federal Express envelope. Contemporaneously with this filing, the Company is serving copies of its Summation Brief to all parties via e-mail and regular mail.

If you have any questions or concerns, please do not hesitate to contact me.

CMS
S. Patroude, Esq.
P. Owen, Esq.
J. Cederberg.

Sincerely,

Bruce V. Miller

Bruce V. Miller
 NJ Bar ID: 244242017

Enclosure

cc: OAL Docket No. PUC 16279-2018S Service List (via e-mail and regular mail)



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

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

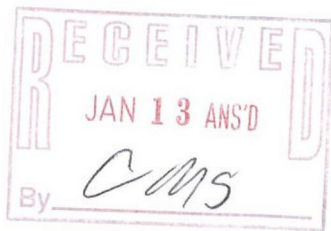
Bruce V. Miller, Esq.
Cullen and Dykman LLP
One Riverfront Plaza
Newark, NJ 07102

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

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

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

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



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STATE OF NEW JERSEY
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TRENTON, NJ

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: bmiller@cullenllp.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

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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 Mtn. 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,²² 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.

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.

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.

⁴⁴ 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.

⁴⁶ P-5, Shields Direct at 34:19-35:4.

⁴⁷ P-86 at RCR-E-32 Attachment, p. 5 of 52.

⁴⁸ *Id.*

⁴⁹ P-7, Shields Rebuttal at 24:3-16.

⁵⁰ P-86 at RCR-E-32 Attachment, p. 1 of 52.

⁵¹ *Id.* at pp. 38-40.

⁵² 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 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 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

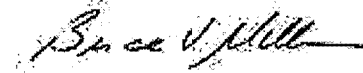
Not only would denial of the Acquisition Adjustment here be directly contrary to BPU policy, precedent and the undisputed facts, but it would frustrate, rather than advance, the BPU's stated goals favoring consolidation of water systems, regionalization and leveraging economies of scale. Such a holding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

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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.*