

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

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, CHANGE IN DEPRECIATION RATES, AND OTHER TARIFF MODIFICATIONS – ACQUISITION ADJUSTMENT REMAND : **BPU Docket No.: WR17090985**
: **OAL Docket No.: PUC 16279-2018S**
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**EXCEPTIONS OF PETITIONER
NEW JERSEY-AMERICAN WATER COMPANY, INC.
TO INITIAL DECISION DENYING REQUEST
FOR AN ACQUISITION ADJUSTMENT**

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New Jersey-American Water Company, Inc. (“NJAWC,” “New Jersey-American Water” or the “Company”) files these exceptions to the findings of fact and conclusions of Administrative Law Judge (“ALJ”) Jacob S. Gertsman in the Initial Decision dated March 2, 2021¹ which recommended that the New Jersey Board of Public Utilities (“Board” or the “BPU”) deny the Company’s request for an acquisition adjustment (“Acquisition Adjustment”) in connection with the purchase of Shorelands Water Company, Inc. (“Shorelands”) and the Borough of Haddonfield’s Water & Sewer System (“Haddonfield”).²

The Company respectfully requests that the Board reject the ALJ’s recommendation not to recognize the Acquisition Adjustment as contrary to the long-standing precedent of the BPU –

¹ BPU Docket No. WR17090985 – *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*, Initial Decision (Mar. 2, 2021) (“Initial Decision”).

² Service of the Initial Decision was effectuated on the BPU and the parties on March 3, 2021.

upon which the Company was guided in making its purchase decisions – and the unrefuted record evidence.

I. PRELIMINARY STATEMENT

As discussed in herein, New Jersey-American Water satisfied its burden of proof justifying recognition in rate base of the \$28,536,369 Acquisition Adjustment and therefore takes exception to the Initial Decision.

Rate base recognition of an acquisition adjustment is not novel. Indeed, the BPU has long-standing precedent authorizing acquisition adjustments where the acquiring utility has demonstrated that the acquisition results in specific benefits to customers. Here, the unrefuted record demonstrates that the combined Shorelands and Haddonfield acquisitions produced specific customer benefits related to avoided or deferred planned capital projects (“Avoided Capital Costs”) as well as operational synergies and the acquisition of valuable resources. Specifically, the Company demonstrated that the acquisition of Shorelands, alone, produced customer benefits that well exceeded the total value of the combined acquisition adjustments; including acquiring valuable water supplies and directly avoiding \$29 million of capital projects and deferring \$18.9 million of other capital projects for 5-10 years, in addition to achieving significant operational benefits. Most notably, \$21 of the \$29 million of capital savings for avoided projects alone stand completely uncontested anywhere in the record by any party.

The New Jersey Division of Rate Counsel Rate Counsel (“Rate Counsel”), BPU Staff and Middlesex Water Company (“Middlesex” and together with Rate Counsel and BPU Staff, the “Opposing Parties”) did not refute the substantial evidence in the record regarding the Company’s Avoided Capital Costs or the resultant operational synergies. In fact, Rate Counsel failed to rebut the supporting facts in the record and explicitly conceded the operational benefits.

Nevertheless, the Initial Decision failed to recognize the countless pages of uncontested testimony by the Company's witnesses and a mountain of evidence, including supporting financial documents, comprehensive planning studies and capital planning documents, justifying the requested Acquisition Adjustment. Instead, the Initial Decision erroneously relied solely on hypothetical scenarios proffered by Rate Counsel's witness who simply painted thin "what if" scenarios regarding just three of the Company's ten substantiated avoided and deferred capital projects to conclude that the Company failed to demonstrate specific benefits to customers from the acquisitions. If there is a "failure," it is the Initial Decision's failure to rest on the record, not on the Company's inability to develop one.

In addition to conspicuously disregarding the unrefuted factual record, the Initial Decision went even further, doing so under the guise of a new standard that the Company must affirmatively make "a commitment not to proceed with the projects"³ lest it find all of its uncontested evidence thrown out the proverbial window. Making such a blanket commitment, however, would be irresponsible for an acquiring utility. Refusing to speculate about the future, the Company agreed to provide notice to the BPU and Rate Counsel if any now unforeseen reasons to pursue any of the avoided capital projects were to emerge. The cost recovery of those projects would then be subject to a full prudence review in the Company's future rate case and be subject to potential disallowance. Such is the appropriate remedy — not the complete denial of an acquisition adjustment.

³ Initial Decision at 38.

Under the Board's governing *Elizabethtown Water*⁴ standard, as amplified and refined in *Howell*,⁵ New Jersey-American Water's evidence warrants full recovery of the requested adjustments. The Initial Decision not only upends the *Elizabethtown Water* and *Howell* standards upon which such acquisitions have relied for decades, but it would turn on its head the substantial evidence standard upon which the Board and the courts of this State have relied for over a century. In their place, the Initial Decision erroneously adopts a new standard where a utility could *never* obtain acquisition adjustment recovery absent a commitment to forego specific capital projects regardless of future circumstances. Adopting such a standard would stifle similar acquisitions in the future, discourage a myriad of long-term specific customer benefits an acquisition may provide, and encourage the utility investment in capital projects that the transaction would have negated. Such an approach is not in the best interest of customers, and the Company respectfully requests that the Board reject the Initial Decision and approve recovery of the Acquisition Adjustment in its entirety.

II. PROCEDURAL HISTORY

The procedural history in this case is set forth in the Initial Decision and the BPU's Order dated October 29, 2018.⁶ The Company will not reiterate that history in its entirety instead focusing on those events significant to the Initial Decision. Specifically, the Company filed with its petition requesting an increase in operating revenues ("Petition") the direct testimonies of Donald Shields, NJAWC's Vice President of Engineering and a professional with over 26 years of water and wastewater utility engineering experience, and Kevin Keane, a 30-year veteran of

⁴ *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 Water*").

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*").

⁶ *See I/M/O New Jersey-American Water Co., Inc. for Approval of Increased Tariff Rates and Charges for Water and Wastewater Service, Change in Depreciation Rates and Other Tariff Modifications*, BPU Docket No. WR17090985, 2018 WL 5793218 (N.J.B.P.U. Oct. 29, 2018).

NJAWC, in support of the Acquisition Adjustment.⁷ Additionally, Mr. Shields filed rebuttal and supplemental testimony. Rate Counsel filed the direct and surrebuttal testimony of Howard J. Woods, Jr., P.E. related to the Acquisition Adjustment.

Evidentiary hearings took place at which both Mr. Shields and Mr. Woods testified on cross and redirect. Neither Rate Counsel, BPU Staff, nor Middlesex asked Mr. Shields a single question on cross-examination related to the Acquisition Adjustment. Likewise, the matter of a commitment not to pursue the avoided or deferred projects was never raised.

Thereafter, the parties entered into a Partial Stipulation on all issues except the Acquisition Adjustment. On November 21, 2019, ALJ Gertsman held oral argument on the Acquisition Adjustment (the “Oral Argument”). Post-hearing briefs were submitted on January 8, 2020 by New Jersey-American Water and Rate Counsel.

III. SUMMARY OF NJAWC’S EXCEPTIONS TO THE INITIAL DECISION

The Company takes exception to the following findings in the Initial Decision: (1) the Company failed to demonstrate that the capital projects specified in the Petition will not proceed; (2) Mr. Woods “presented reasonable conditions where any or all the projects may proceed, which NJAWC has failed to sufficiently address;”⁸ and (3) the testimony of NJAWC witnesses Shields, Tomac and Keane was not persuasive because they failed to “commit” to the avoided capital projects. Additionally, the Company takes exception to the following conclusions of law in the Initial Decision: (1) NJAWC failed to meet its burden to demonstrate that the Shorelands acquisition will provide tangible benefits to ratepayers; (2) the Company failed to meet its burden that the Haddonfield acquisition provides tangible benefits to existing customers; and (3) the

⁷ The Company filed additional direct testimony in support of the Acquisition Adjustment that will be referenced throughout these Exceptions.

⁸ Initial Decision at 30.

Acquisition Adjustment fails to meet the requirements set forth by the Board in *Elizabethtown Water* and *South Jersey Gas*.⁹

A careful analysis of the record demonstrates that the only finding supported by the evidence is that the Company demonstrated specific benefits to its customers as a result of the acquisitions. The Initial Decision's findings, on the other hand, are supported solely by unsupported allegations—the speculation and conjecture of Mr. Woods with respect to three out of ten projects — and not by substantial credible evidence. Further, the Initial Decision's heightened burden of proof requiring the Company to promise that it would avoid the capital projects, under any circumstances, even if unforeseen events at some indeterminate future time warranted a similar project, is an impossible burden to meet and runs afoul of BPU precedent and policy.

Nowhere in *Howell* or *Elizabethtown Water* did the BPU require that the acquiring utility guarantee that any alleged avoided capital projects be avoided essentially ***forever***. The Initial Decision's new standard would stifle acquisitions in the State in favor of otherwise avoidable capital investments. Additionally, neither *Howell* nor *Elizabethtown Water* suggested that the BPU or the OAL should deviate from the burden shifting process or the substantial evidence standard. Substantial evidence “does not rise from bare surmise, conjecture, speculation or rumor.”¹⁰ Accordingly, the Company respectfully requests that the BPU reject the Initial Decision and approve rate base recognition of the Acquisition Adjustment.

IV. LEGAL ARGUMENT

The Initial Decision is contrary to the substantial credible evidence set forth by the Company. Preliminarily, it is undisputed that *Elizabethtown Water* and its progeny govern this

⁹ *I/M/O Petition of South Jersey Gas Co. For Approval of Increased Base Tariff Rates & Charges*, BPU Docket No. 843-184 (N.J.B.P.U. Dec. 30, 1985) (“*South Jersey Gas*”).

¹⁰ *MSGW Real Estate Fund, LLC v Mtn. Lakes Borough*, 18 N.J. Tax 364, 375 (Tax 1998).

case. In *Elizabethtown Water*, the Board 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.”¹¹ 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.”¹²

In *Howell*, 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 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.¹³

Here, NJAWC had the “burden of proof to show the validity of its position”¹⁴ and was required to satisfy that burden with a preponderance of the evidence.¹⁵ In other words, NJAWC

¹¹ *Elizabethtown Water* at 614. In *Elizabethtown Water*, 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.

¹² *Howell* at *14.

¹³ *Id.* at *13-14.

¹⁴ *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).

¹⁵ *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)).

must demonstrate that the specific benefits to its customers resulting from the Shorelands and Haddonfield acquisitions are more probable than not. Once the Company satisfied that burden, which the Company in fact did, the burden shifts to the Opposing Parties to come forward with evidence to support its defense.

The Company amply supported recognition of the Acquisition Adjustment in rate base under *Elizabethtown Water* and *Howell*¹⁶ by demonstrating that: (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.

New Jersey-American Water presented its *prima facie* case and the Opposing Parties presented no factual evidence to rebut it. Indeed, the Initial Decision's findings regarding Shorelands are based solely on three hypothetical scenarios presented by one witness. It is that hypothetical, speculative testimony that the Initial Decision relied upon to erroneously conclude that the Company's witnesses, who presented significant testimony on not three, but on ten avoided and deferred capital projects, were not persuasive. Bare allegations, untethered from facts or reality, however, cannot support a decision that relies on them.¹⁷

¹⁶ 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.

¹⁷ *Cell S. Of New Jersey, Inc. v Zoning Bd. Of Adj. Of W. Windsor Tp.*, 172 N.J. 75, 88 (2002) (“Prudence dictates that zoning boards root their findings in substantiated proofs rather than unsupported allegations. By affording undue weight to the residents' unsubstantiated testimony, the Board disregarded the weight of the evidence in the record in determining to deny Comcast its variance. Because we cannot find persuasive evidence in the record to support the Board's decision denying Comcast the variance, the decision must be set aside as arbitrary, capricious and unreasonable”).

A. The Initial Decision's Findings With Respect to Shorelands Are Contrary to the Substantial Record Evidence

1. *The Initial Decision Conspicuously Ignores the Substantial Evidence that New Jersey-American Water's Acquisition of Shorelands¹⁸ Results in Avoided Capital Projects*

Because of the Shorelands system's unique location, the acquisition and merger of Shorelands allows NJAWC to optimize its water supply portfolio in this portion of Monmouth County. Integrating the Shorelands system, with its water supplies and beneficial pressure gradients, into the surrounding NJAWC Coastal North system allowed NJAWC to avoid capital projects associated with finished water storage that were planned for the Coastal North system.¹⁹ "The acquisition represents a key element in managing the regional water supplies for the NJAWC Coastal North System."²⁰ The acquisition of Shorelands essentially permitted the integration of water systems that naturally fit together; Shorelands being the hole in the donut of the surrounding Company system. Mr. Shields explained that, in addition to providing valuable water resources, the Shorelands acquisition, coupled with a gradient realignment will fully utilize the Shorelands elevated tanks to provide proper system equalization.²¹

The Company presented testimony and evidence that the Shorelands acquisition results in the cancellation of \$29,000,000 in the following previously planned capital investments:

1. Replacement of the Navy Tank (\$3,700,000);
2. Construction of a Dual Purpose High/Low Gradient Tank (\$3,500,000);
3. Conversion of the Union Beach standpipe to ground storage (\$5,000,000);
4. Replacement of five pressure reducing valves ("PRVs") serving the low pressure gradient in Aberdeen (\$2,500,000);
5. Replacement of three PRVs in the Middletown zone (\$800,000);
6. Development of two Englishtown Wells (\$3,500,000); and

¹⁸ The BPU approved the acquisition on March 24, 2017. *See I/M/O Joint Petition of American Water Works Co., Inc.; New Jersey-American Water Co., Inc.; and Shorelands Water Co. Inc.*, BPU Docket No. WM16101036 (March 24, 2017).

¹⁹ P-5, Shields Direct at 34:9-13.

²⁰ P-7, Shields Rebuttal at 26:9-10.

²¹ P-7, Shields Rebuttal at 22:17-18.

7. Construction of four miles of the Raritan-Middlesex Pipeline (\$10,000,000).²²

The evidence supporting these projects and their cancellation made possible by the Shorelands acquisition is compelling and overwhelming.

1. The Navy Tank

Following the recommendation of a 2014 Coastal North System Comprehensive Planning Study (“CPS”), New Jersey-American Water planned to replace the Middletown Navy Tank, located in the Coastal North, with an elevated tank at a cost of \$3,700,000.²³ Because the Navy Tank is not elevated, it is not optimal for fire protection or flow equalization during peak day demands.²⁴ The CPS noted that most of the Navy Tank’s volume “is ineffective for equalization or fire protection because system pressures at high elevations drop low (<20 psi) when the tank HGL [Hydraulic Grade Line] is below ~240 feet during summer maximum day demand conditions.”²⁵

New Jersey-American Water can now instead use Shorelands’ elevated tanks to address the pressure equalization issues during peak day demands in the Middletown gradient.²⁶ The acquisition, “coupled with a gradient realignment”, eliminated the need to replace the Navy Tank.²⁷

2. Dual Purpose High/Low Gradient Tank

New Jersey-American Water intended to construct a Dual Purpose High/Low Gradient Tank in Aberdeen (the “Dual Purpose Tank”) to supply additional storage to both the high and low

²² P-5, Shields Direct at 34:5-36:10; P-8 Tomac Direct at 38:7-18 and Schedule FXS-1.

²³ 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.

²⁴ P-7, Shields Rebuttal at 22:13-15; P-86 at RCR-E-32 Attachment, p. 3 of 52.

²⁵ P-86 at RCR-E-32 Attachment, p. 3 of 52.

²⁶ P-5, Shields Direct at 34:17-35:1.

²⁷ P-7, Shields Rebuttal at 22:17-18.

gradients in Aberdeen and mitigate the high frequency of main breaks.²⁸ Prior to the acquisition, the Aberdeen low-pressure gradient had *no tank storage* to handle pressure surges caused when water in motion is forced to stop or change direction.²⁹ As a result, the average number of main breaks in New Jersey-American Water's Aberdeen system was 0.66 main breaks per mile compared to 0.13 breaks per mile on average in the Middletown system, which has several storage tanks.³⁰

Mr. Shields demonstrated that NJAWC will definitively avoid construction of the Dual Purpose Tank because of the integration of two system gradients, as well as the additional Shorelands' storage tanks and water allocation.³¹ No other party provided testimony to the contrary. Further, no party provided any testimony to contradict the Company's evidence demonstrating the need for the Dual Purpose Tank either before or after the Shorelands acquisition.

3. Conversion of the Union Beach Standpipe

Mr. Shields's testimony also demonstrated that the Shorelands acquisition allowed New Jersey-American Water to avoid the conversion of the Union Beach standpipe to ground storage. As he testified, New Jersey-American Water's Middletown gradient had insufficient elevated storage.³² The integration of the two system gradients and the additional Shorelands water storage and water allocation solves the pre-existing storage issues in the Coastal North.³³ Again, no other party provided any evidence with regard to the Union Beach standpipe or operating conditions in this system. New Jersey-American Water demonstrated through undisputed record evidence that the conversion of the Union Beach standpipe would be avoided.

²⁸ P-86 at RCR-E-32 Attachment, p. 33 of 52.

²⁹ P-23, Keane Direct, 2:21-3:5; P-86 at RCR-E-32 Attachment, pp. 1, 30 of 52.

³⁰ P-23, Keane Direct at 3:9-12.

³¹ P-5, Shields Direct at 34:15-35:4; P-23 at Keane Direct, 3:3-7.

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

³³ P-5, Shields Direct at 34:17-35:4.

4. Replacement of Pressure Reducing Valves (“PRV”s)

Mr. Shields testified that the Shorelands acquisition allowed New Jersey-American Water to remedy the storage issues in the Coastal North and eliminate the replacement of several PRVs:

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. The other two tanks in the Hazlet 185 HGL would benefit the creation of the new Middletown Low and be incorporated as one larger 185 HGL pressure zone, improving control over system flows and pressures and improving operational efficiencies.³⁴

No other party provided any evidence with regard to the need for the PRVs, operating conditions in this system, or New Jersey-American Water’s ability to avoid constructing these assets.

5. Englishtown Wells

Evidence related to the avoidance of the construction of two Englishtown wells was substantial and compelling. A CPS originally identified the need for the project because several existing wells in the Lakewood gradient had deteriorated and were not operating at full capacity.³⁵ As stated in the CPS, “[t]he total permitted daily pumping capacity of these wells is 3.5 mgd, with an actual pumping capacity of 2.4 mgd.”³⁶ Further, the wells were pumping below their monthly allocation limit.³⁷ The wells’ poor performance caused a supply deficit within the Lakewood gradient, which is currently experiencing significant organic growth.³⁸

Mr. Shields’s direct testimony demonstrated that the Shorelands acquisition increased New Jersey-American Water’s “ability to leverage its Aquifer Storage and Recovery (“ASR”) strategy.”³⁹ The availability of Shorelands’ groundwater in the Coastal North has allowed New

³⁴ P-5, Shields Direct at 34:19-35:4.

³⁵ P-86 at RCR-E-32 Attachment, p. 5 of 52.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ P-5, Shields Direct at 35:9-11.

Jersey-American Water to serve Lakewood locally through interconnections rather than by drawing water down from the North — eliminating the need to construct the Englishtown wells.⁴⁰

6. Shortening the Raritan-Middlesex Pipeline

The purpose of the Raritan-Middlesex Pipeline project was 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.⁴¹ Planning for the project began as early as 2013.⁴²

As discussed, the Shorelands acquisition solved many of New Jersey-American Water's water supply issues in the Coastal North. The Company's testimony and evidence demonstrated that the integration of the two systems allowed New Jersey-American Water to shorten the length of the originally contemplated Raritan-Middlesex Pipeline by about four miles utilizing pipeline capacity within Shorelands, lowering the project's cost by approximately \$10,000,000.⁴³ No other party provided any evidence with regard to the need for the pipeline, the proposed scope or route, or the impact of the Shorelands acquisition on the costs of the project.

2. *New Jersey-American Water's Acquisition of Shorelands Results in Benefits Flowing from Deferred Capital Projects*

In addition to the avoided capital costs resulting from the Shorelands acquisition, New Jersey-American Water provided evidence and testimony regarding the deferral of \$18,900,000 in capital additions.⁴⁴ First, New Jersey-American Water had planned to construct six new ASR wells as recommended by the CPS:

Currently, the Coastal North System does not have adequate reliable capacity to meet summer peak demands within the system. During the winter time surface water supplies are in excess; however NJAW

⁴⁰ P-7, Shields Rebuttal at 24:3-16.

⁴¹ P-86 at RCR-E-32 Attachment, p. 1 of 52.

⁴² *Id.* at pp. 38-40.

⁴³ P-85, RCR-E-31; P-8, Tomac Direct at FXS-1; P-5, Shields Direct at 35:11-14.

⁴⁴ P-5, Shields Direct at 35:14-36:2.

currently does not have the capability to store the water throughout the system. An aquifer storage and recovery well could capture excess water during winter months and provide extra capacity during the summer time when demands are high.⁴⁵

Mr. Shields testified that in light of the additional storage that Shorelands provides, New Jersey-American Water delayed for at least five years the construction of the ASR wells at a cost of \$14,900,000.⁴⁶

Second, New Jersey-American Water had planned certain resiliency projects at the Newman Springs Pump Station (“NSPS”).⁴⁷ The NSPS provides potable water to the Monmouth County area and is located in a floodplain.⁴⁸ During Superstorm Sandy, the NSPS experienced flooding despite sand bagging measures, and access to the site was impeded.⁴⁹ In 2016, Kleinfelder, an outside engineering consulting company, conducted a Climate Resiliency Pilot Study (the “Kleinfelder Study”) and recommended certain adaptation strategies to improve resiliency at the site.⁵⁰ The Kleinfelder Study found that the site surrounding the NSPS was likely to experience high water levels that would significantly reduce the reliability of the NSPS.⁵¹ Kleinfelder recommended that New Jersey-American Water 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.”⁵² Again, Mr. Shields testified that because of the integration of Shorelands’ elevated storage, New Jersey-American Water can delay improvements to the NSPS that Kleinfelder recommended.⁵³

⁴⁵ P-86 at RCR-E-32 Attachment, pp. 7 of 52.

⁴⁶ P-5, Shields Direct at 35:19-20; P-86 at RCR-E-32 Attachment, pp. 1, 7-16 of 52.

⁴⁷ P-86 at RCR-E-32 Attachment, pp. 17-28 of 52.

⁴⁸ P-86 at RCR-E-32 Attachment, p. 24 of 52.

⁴⁹ *Id.*

⁵⁰ *Id.* at pp. 17-28 of 52.

⁵¹ *Id.* at pp. 24-27 of 52.

⁵² *Id.* at p. 22 of 52.

⁵³ P-5, Shields Direct at 35:20-36:2.

3. *No Party Provided Sufficient Credible Evidence or Testimony to Rebut NJAWC's Prima Facie Case*

Rate Counsel was the only party to come forward with testimony that purported to rebut NJAWC's evidence and in that case, it was only in reference to three projects – the avoided Englishtown Wells and the Navy Tank, as well as the deferral of the NSPS Resiliency Projects. Specifically, Rate Counsel Witness Woods testified that New Jersey-American Water “could decide” to build the wells after all and build them on schedule in 2020;⁵⁴ however Mr. Woods provided zero evidence to support his conjecture. With respect to the Navy Tank, Mr. Woods failed to address the fact that the replacement tank needed to be elevated, not at ground level as was the existing tank. With respect to the deferral of the Resiliency Projects, Mr. Woods's speculation that the project could go forward in 2020 cannot even be squared with reality because such projects remain on the drawing board. Mr. Woods's testimony regarding the Englishtown Wells was also in stark contrast to the testimony of Mr. Shields, the person most familiar with the system, who contradicted Mr. Woods's speculation with concrete, factual testimony that New Jersey-American Water will not construct those wells.

Nevertheless, the Initial Decision improperly attempts to rehabilitate Mr. Woods's testimony, finding:

While Woods acknowledged that the Shoreland acquisition eliminates pressure problems in Aberdeen, Rate Counsel persuasively argues the water supply issue in Lakewood remains. In fact, Shields acknowledged that “[t]he Coastal North System has a reliable maximum supply deficit.” (P-5 at 14.) Rate Counsel further argues that the ASR Wells, which the Company claims to constitute \$14 million in avoided costs, goes directly to the supply issue. They contend that the Company cannot commit to not building the ASR and Englishtown Wells because the Company knows there is growth in the area, and they must provide safe, adequate, and proper service. (TT 65:1-25; 66:1-6.)⁵⁵

⁵⁴ RC-1, Woods Direct at 35:14-17.

⁵⁵ Initial Decision at 36.

Here, the Initial Decision not only confuses speculation with evidence, but it improperly conflates the cancelled Englishtown Wells and the delayed ASR wells. As noted above, the Englishtown Wells are part of the cancelled projects. The benefits from the ASR wells result from their delay. They are completely separate projects.

With respect to the Englishtown Wells, Mr. Woods speculated that the avoided costs related to the Englishtown Wells should be disregarded because the Company “could decide” to build them after all and build them on schedule in 2020, implying that the associated costs should not be properly considered an avoided cost.⁵⁶ Yet, confronted on cross-examination at the evidentiary hearing, Mr. Woods retreated:

- 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.⁵⁷

Not only did Mr. Woods’s original rationale evaporate due to this concession on cross-examination, but the project clearly was not built in 2020 as he claimed it might be.

The ASR Wells are an entirely different issue. They are part of the delayed projects. Mr. Woods disputed neither their delay nor benefit. At the Oral Argument, Rate Counsel invented a new argument, selectively quoting Mr. Shields’s testimony that the Coastal North system has a “reliable maximum day supply deficit”⁵⁸ and Lakewood is experiencing high growth.⁵⁹ This has nothing to do with the ASR wells’ delay or with the Englishtown wells. Moreover, the claim defies 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

⁵⁶ RC-1, Woods Direct at 35:14-17.

⁵⁷ Hearing Trans., June 11, 2018 at 145:3-8.

⁵⁸ *Id.* at 42:13-15 (quoting P-5, Shields Direct at 14:6-7).

⁵⁹ Oral Arg. Trans., Nov. 21, 2019 at 42:6-7.

Water Treatment Plant (“WTP”). Mr. Shields’s testimony actually states in the very same paragraph quoted by Rate Counsel 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.”⁶⁰ The Sunset Road expansion is one of several projects including the Oak Glen Expansion and the Oak Street Treatment improvements, all of which are key elements of addressing the existing capacity issues in the Coastal North Region.⁶¹

Indeed, a full reading of Mr. Shields’s testimony indicates that this expansion project, which is currently under construction,⁶² will provide an additional 1.73 mgd to the reliable maximum day capacity of the Coastal North system.⁶³ 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.

The evidence is irrefutable. The Englishtown Wells remain cancelled; the ASR wells remain delayed.

With respect to the cancelled Navy Tank replacement project, the Initial Decision, supported only by speculation and conjecture, found that:

Woods’ testimony persuasively raised reasonable conditions that could cause the Company to move forward with the capital projects. For example, if the Company determined to proceed with the replacement of the Navy Tank, Woods testified that “the entire net positive benefit balance that’s shown in FSX-1 [P-8], the benefit that customers would receive, would be wiped out just with that one project.” (J-1 144: 5-8.)⁶⁴

This is yet another finding supported by neither evidence nor logic. The Navy Tank was an existing ground level tank. Its proposed replacement was an elevated tank. The beneficial

⁶⁰ P-5, Shields Direct at 14:9-11 (emphasis added).

⁶¹ P-7 Shields Rebuttal at 9:1-3.

⁶² P-5, Shields Direct at 14:6.

⁶³ P-5, Shields Direct at 15:18-19.

⁶⁴ Initial Decision at 36.

Shorelands pressure gradients eliminated the need to build a brand new elevated tank at the site of the existing ground level Navy Tank, eliminating \$3,700,000 of capital costs.

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.⁶⁵ Notably, 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.⁶⁶ Nevertheless, the condition of the existing tank was not the issue. The Navy Tank replacement project was an elevated tank to address system pressures.⁶⁷ When Shorelands supplied those pressures, the new, elevated tank became unnecessary. Allowing the existing tank to remain in service as a storage tank was simply an added benefit, not part of the avoided \$3,700,000.

Regarding the NSPS projects, Mr. Woods only speculated as to what would happen if New Jersey-American Water decided after the fact not to delay the NSPS projects.⁶⁸ But he provided no actual evidence that he thought the deferral would not occur. Neither Rate Counsel nor any other party challenged New Jersey-American Water's conclusion that the NSPS projects were in the works at the time of the acquisition or that the acquisition resulted in their deferral.⁶⁹

⁶⁵ R-1, Woods Direct at 34:12-18.

⁶⁶ P-7, Shields Rebuttal at 23:5-12.

⁶⁷ As Mr. Shields explained in his rebuttal testimony "[t]he primary reason for replacement of the Navy Tank was the fact that it is not elevated, therefore is not as useful for flow equalization during peak day demands. The replacement would have been an elevated tank with a high enough elevation to provide system pressure equalization. The Shorelands acquisition, coupled with a gradient realignment will fully utilize the Shorelands elevated tanks to provide proper system equalization." P-7, Shields Rebuttal at 22:13-18.

⁶⁸ RC-1, Woods Direct at 35:17-36:2.

⁶⁹ Hearing Trans., June 11, 2018 at 144:20-22.

Therefore, although, the Initial Decision found that Mr. Woods “presented reasonable conditions where any or all the projects may proceed, which NJAWC has failed to sufficiently address,”⁷⁰ this finding is unsupported because Mr. Woods only speculated on three of the ten projects. He was silent on the remainder. Projecting that speculation to the remaining seven projects only piles on more speculation. This is not the sound basis for an Initial Decision.

Neither were Mr. Woods’s conditions “reasonable” as the Initial Decision claims. Of the three projects where Mr. Woods did identify “conditions” (*i.e.*, Englishtown Wells, Navy Tank and NSPS), he conceded there was no reason why the project would be developed (Englishtown Wells), misunderstood why the project was needed (the new Navy Tank needed to be an elevated tank) and ignored the record (NSPS). The Initial Decision entertained Mr. Woods’s speculation about water supply issues in NJAWC’s Coastal North System but ignored 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.”⁷¹ Mr. Shields further testified, “[Rate Counsel Witness] Woods does not consider this issue in his testimony. *These projects provide the very supply that Mr. Woods references in his testimony related to the elimination of the Englishtown wells.*”⁷² 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.⁷³ Rate Counsel, along with the other Opposing Parties, conveniently failed to mention this evidence, too, which negates the claims raised by Rate

⁷⁰ Initial Decision, at 30.

⁷¹ P-7, Shields Rebuttal at 24:6-7.

⁷² P-7, Shields Rebuttal at 24:8-10 (emphasis added).

⁷³ P-5, Shields Direct at 9:16-21.

Counsel's attorneys. Perhaps even more glaring for its omission, both Rate Counsel and the Initial Decision fail to acknowledge the effect on water supplies of the planned construction of the Raritan-Middlesex Pipeline. As noted earlier, simply by purchasing Shorelands, New Jersey-American Water was able to shorten the route of this needed resource by approximately 4 miles, producing \$10 million of the \$29 million in avoided capital investment from that project, alone.⁷⁴

The Company has submitted credible evidence, which has not been refuted *with evidence* by any party, not only that the Company is actively managing Lakewood's supply issues and that the Shorelands acquisition, by contributing additional groundwater, has alleviated Lakewood's supply constraints, but also that the challenged projects were planned and now have been cancelled or delayed.

4. *No Party Disputed New Jersey-American Water's Evidence that the Shorelands Acquisition Resulted in Significant Operational Synergies*

The record provides numerous, unrefuted examples of the significant operational synergies and synergies benefitting both legacy and acquired customers that were made possible by the Shorelands acquisition. Mr. Keane testified that the integration of Shorelands into and with New Jersey-American Water "will create overall lower operating pressures in the combined systems, which translates into lower energy consumption, fewer main breaks and overall greater operational savings."⁷⁵

The Shorelands acquisition permits the following operational synergies and benefits:

- 1) The merger of Shorelands' 185' HGL gradient and system storage tanks with the existing New Jersey-American Water system will reduce the high frequency of main breaks in Aberdeen.⁷⁶ Mr. Keane and Mr. Shields also testified to the various other operational impacts and operating expense savings.⁷⁷

⁷⁴ P-5, Shields Direct at 35:12-17; *see also* P-7, Shields Rebuttal at 24:13-16.

⁷⁵ P-23, Keane Direct at 2:18-21.

⁷⁶ P-5, Shields Direct at 35:2-4.

⁷⁷ P-5, Shields Direct at 34:8 -37:9; P-23, Keane Direct at 2:7-8:2.

- 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.⁷⁸
- 3) The Shorelands acquisition will improve water supply in the region and reduce overall operating expenses.⁷⁹
- 4) The need for the Company's Union Beach system to purchase water from Shorelands through two interconnects is eliminated.⁸⁰ As a result, NJAWC will no longer charge the associated purchased water costs to existing customers, a direct financial benefit to legacy customers.⁸¹
- 5) Purchased water costs from the Marlboro MUA and/or the New Jersey Water Supply Authority during peak periods will decrease.⁸²
- 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."⁸³
- 7) Shorelands' water assets will "drive operational efficiencies and help balance and manage limited water resources in a growing area of the state."⁸⁴

The Shorelands acquisition leverages economies of scale which result in efficiencies and savings associated with 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.⁸⁵ NJAWC also reduced the employee count for the Shorelands system from 25 to 14, lowering salary expenses.⁸⁶ 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. It is benefits such as these from NJAWC's policy of acquiring new water systems and customers that have 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 over the eight years since the Company filed its last rate case.⁸⁷

⁷⁸ P-23, Keane Direct at 2:21-3:20.

⁷⁹ *Id.* at 6:20-7:4

⁸⁰ *Id.* at 4:1-7.

⁸¹ P-7, Shields Rebuttal at 25:6-7.

⁸² P-23, Keane Direct at 4:12-14; P-7, Shields Rebuttal at 25:7-18.

⁸³ P-23, Keane Direct at 4:7-9.

⁸⁴ P-7, Shields Rebuttal at 21:6-9.

⁸⁵ P-23, Keane Direct at 5:2-19.

⁸⁶ *Id.* at 6:12-18.

⁸⁷ P-22, Shroba Rebuttal at 2:8-10.

No party contested the operational benefits created by the Shorelands acquisition. In fact, when Mr. Woods was asked if he disputed these operational benefits and synergies, he explicitly conceded: “I don’t dispute those. No.”⁸⁸ The examples above abundantly illustrate that the Shorelands acquisition directly benefitted customers through operational synergies and economies of scale and by optimizing NJAWC’s water supply portfolio in the Coastal North system which remedied water supply deficiencies and increased system reliability.

5. *The Initial Decision’s Findings that NJAWC’s Witnesses were not Persuasive and that the Company Failed to Demonstrate Specific Benefits to Customers is Unsupported by the Record Evidence and Rests Almost Entirely on Speculation and Conjecture.*

Despite the fact that the Company’s evidence remained largely undisputed, the Initial Decision found the Company’s witnesses unpersuasive and concluded that the Company failed to demonstrate specific benefits to customers resulting from the Shorelands acquisition. In so holding, the Initial Decision explicitly went against BPU precedent and created a new, heightened standard that would be impossible to meet by an acquiring utility.

Here, the benefits of the Shorelands acquisition were established on the record by New Jersey-American Water witnesses who had detailed familiarity with the two water systems and their integration. 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, they provided 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

⁸⁸ Hearing Trans., June 11, 2018 at 145:3-8.

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 afterthought that had been artificially created to justify the Shorelands acquisition adjustment.⁸⁹ To the contrary, the Company had planned each project to address various, pre-existing pressure and water supply issues. As explained previously, the projects were fully supported by Comprehensive Planning Studies and other pertinent evidence. In fact, Exhibit P-86 directly addressed the avoided capital projects and contains the relevant CPSs (including detailed engineering drawings, maps, cost estimates, pilot studies, etc.) establishing that before the Shorelands acquisition, the Company was actively planning to construct the avoided capital projects in order to alleviate pressure and supply problems in the Coastal North.⁹⁰ 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 was consistent with the exhibit. No party contested that proof or tested it upon cross-examination. Indeed, none of the Opposing Parties cross examined any of the Company's witnesses on any fact related to the Acquisition Adjustment and no NJAWC witness was asked about "a commitment." As previously noted, more than \$21 million of the \$29 million of benefits from five of the seven cancelled projects stands completely unrefuted. So does \$14.9 million from one of the two delayed projects. The Initial Decision, however, allowed conjecture regarding three of the ten projects to completely eviscerate the undisputed testimony and record evidence.

⁸⁹ BPU Staff speculated at the Oral Argument that "these projects are purely speculative because there has been no evidence provided that shows the company was actually planning on making these improvements. These projects are, as counsel called it, projected, with no real commitment whatsoever." Oral Arg. Trans., Nov. 21, 2019 at 52:6-11. The record refutes that claim.

⁹⁰ 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).

Although the Opposing Parties failed to provide any meaningful rebuttal to the Company's evidence besides surmise, speculation and, in some instances, misstatements of the record, the Initial Decision simply parrots that conjecture and speculation when it announces that "the Company has failed to sufficiently address the reasonable conditions set forth by Woods, where any or all of the projects could proceed."⁹¹ If there is a "failure," it rests on the Initial Decision's failure to hew to the record, not on the Company's inability to develop one.

"Substantial evidence" is "such evidence as a reasonable mind might accept as adequate to support a conclusion"⁹² and must be based on "substantiated proofs rather than unsupported allegations."⁹³ "Substantial evidence" cannot be "surmise, conjecture, speculation or rumor."⁹⁴

That the Initial Decision rests entirely on speculation, conjecture and surmise is self-evident. Note, for example, that although the Initial Decision contends that *if* the changes to the projects occurred, then the net present benefits would become a loss, the Initial Decision fails to disclose what could cause that to happen. The reason is because those conditions were not provided in the record. They are sheer conjecture.

The Initial Decision (at page 22), oddly even recounts the admissions on cross-examination made by Rate Counsel's witness that revealed his claims as entirely speculative:

He added that he did not know if the [Navy Tank] project would be replaced in five years and did not know if it needed to be replaced...He further acknowledged that he had no reason to believe that the two Englishtown wells in the Lakewood area need to be developed but added:

This is all an effort to test the sensitivity of the analysis that was offered by the Company to me. To see how the analysis and its results would chaining [sic] if different circumstances were identified down the road, you know, at some point in time.

⁹¹ Initial Decision at 30.

⁹² *In re Public Serv. Electric & Gas Co.*, 35 N.J. 358, 376 (1961).

⁹³ *Nextel of New York, Inc. v Zoning Bd. of Adj. of Tp. of Edison*, A-4851-04T5, 2006 WL 3093712 at *9 (N.J. Super. Ct. App. Div. Sept. 27, 2006).

⁹⁴ *MSGW Real Estate Fund, LLC*, 18 N.J. Tax 364, 375.

Woods did not dispute that the operational benefits and cost reductions from the Shoreland acquisition put forth by NJAWC in its testimony.⁹⁵

With all due respect, a claim that “if different circumstances were identified down the road, you know, at some point in time” is hardly evidence. Yet, despite recognizing that Woods’s claims were entirely speculative, the Initial Decision is entirely reliant on them.⁹⁶

It is the function of an administrative officer to weigh the evidence and base their decision on the substantial record evidence, not to create a record out of whole cloth and base findings on supposition and conjecture.⁹⁷ The Courts have stated again and again that speculation is not evidence.

Yet the Initial Decision then goes straight down that rabbit hole finding:

The record demonstrates a number of other conditions could change, leading NJAWC to revert to the original construction schedule for the projects it claims to be avoided and deferred. The Company could decide that it needs the two Englishtown wells in the Lakewood area on the original schedule, which would result in the expense of \$3,500,000 in 2020. Additionally, if NJAWC determined to go forward with the replacement and storm protection of the Newman Springs Clearwell in 2020, as opposed to 2032, the project would incur a cost of \$4,000,000 with ratepayers asked to support the cost in their rates.⁹⁸

“If” and “could” are not evidence. They are unsupported guesses. One is left to ask, “What conditions would change and why?” Not only does the Initial Decision leave one guessing, the

⁹⁵ Initial Decision at 22 (internal citations omitted).

⁹⁶ The Initial Decision curiously finds “Notwithstanding its testimony contesting Woods’ assertion that these were not troubled systems, it is clear that the Company has abandoned its prior argument. Accordingly, I am persuaded by Woods’ testimony and thus **FIND** that Shorelands and Haddonfield were not troubled systems.” *Id.* at 27. However, the Company did not claim the systems were troubled and counsel made that fact clear at the Oral Argument. *See* Oral Argument Trans., Nov. 21, 2019 at 33:10-14.

⁹⁷ “The substantial evidence rule is applied rigorously in literally hundreds of cases and has become so well established in the federal courts and in many of the state courts that detailed reference to all of the many cases would serve no useful purpose. The courts continue to apply the usual corollaries to the rule, i.e., that it is the function of the administrative agency... to weigh the evidence....” *Hornauer v. Div. of Alcoholic Beverage Control, Dept. of L. and Pub. Safety*, 40 N.J. Super 501, 503-04 (N.J. Super. Ct. App. Div. 1956) (quoting Chief Justice Vanderbilt in the *1964 Annual Survey of American Law* (N.Y.U. School of Law)).

⁹⁸ Initial Decision at 29.

conditions claimed are illusory and contrary to the record.

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. Rate Counsel's own expert could point to no reason why the Englishtown Wells project would be resurrected.

The Initial Decision's discussion of the Newman Springs project was equally speculative. The Newman Springs Clearwell project was not one of the seven cancelled projects. It was one of the projects that could be delayed due to the integration of Shorelands' elevated storage, deferring \$4 million in capital costs.⁹⁹ The very suggestion in the Initial Decision that it could still be built in 2020 is absurd. It is 2021. The project remains delayed for years – just as the Company stated.

The degree to which the findings in the Initial Decision rest on mere conjecture is, frankly, stunning. For example, the Initial Decision states, “*if* the Company determined to proceed with the replacement of the Navy Tank, Woods testified that ‘the entire net positive benefit balance...the benefit that customers would receive, would be wiped out just with that one project.’”¹⁰⁰ “If” is not evidence, substantial or otherwise.¹⁰¹

“Evidence must rest on the reasonable probability that the tendered hypothesis, in all human likelihood, is true.”¹⁰² The Navy Tank project was cancelled because it called for a new, elevated storage tank to provide reinforcement of system pressures and flow. When Shorelands

⁹⁹ P-5, Shields Direct at 35:20-36:2.

¹⁰⁰ Initial Decision at 36 (emphasis added).

¹⁰¹ *See Re Aqua, New Jersey, Inc.*, BPU Docket No. WR05121022, 2007 WL 781342 (N.J.B.P.U. Jan. 17, 2007) (adopting initial decision which states that “mere speculation and estimation” does not constitute “substantial, credible evidence on the record”); *New Jersey Div. of Child Protection and Permanency v N.M.S.*, A-0284-16T3, 2017 WL 6014881, at *5 (N.J. Super. Ct. App. Div. Dec. 5, 2017) (“speculation is not evidence”).

¹⁰² *Kubs v. Jersey Central Power & Light Co.*, BPU Docket No. EC17121255U, 2018 WL 6812634, at *6 (N.J.B.P.U. Dec. 18, 2018).

provided those pressures and flows, the need for the *elevated* tank evaporated. Nor would the other avoided capital projects be brought back to life. Five of the seven projects (*i.e.*, Navy Tank, Dual Purpose High/Low Gradient Tank, Conversion of the Union Beach Standpipe, and replacement of the PRVs in both Aberdeen and Middletown) had been required 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. Accordingly, the projects were cancelled because the need for them disappeared with the Shorelands acquisition. Thus, the likelihood that any of the avoided capital projects would be brought back to life is not foreseeable on this record or, indeed, in any logical review of those projects.

When an agency denies a request such as the Acquisition Adjustment, “there must be substantial evidence in the record supporting its decision. Conjecture, speculation, and unsubstantiated concerns do not provide a firm foundation for [an agency’s] denial.”¹⁰³ In short, the speculation, conjecture and illogical findings upon which the Initial Decision rests simply cannot support affirmance by the Board.

B. The Initial Decision’s Finding that NJAWC Failed to Prove Its Case Is Based Solely on Announcement of a New Evidentiary Standard and Rewriting the Elizabethtown Water and Howell Precedents

1. *The Initial Decision Turns Substantial Evidence on Its Head.*

Given the overwhelming evidence of the benefits produced by the Shorelands acquisitions, why did the Initial Decision turn its back on this clear evidence? The answer lies in the entirely new evidentiary standard conjured by the Initial Decision. Rather than weighing the evidence, the Initial Decision found that “by declining to *commit* to the elimination of the capital projects, the

¹⁰³ *Nextel of New York, Inc.*, 2006 WL 3093712, at *9.

benefits to ratepayers are subject to reasonable conditions where any or all of the projects could proceed.”¹⁰⁴ The Initial Decision could not be more clear:

The Company has been resolute in its position that a commitment not to proceed with the projects would be irresponsible, which is plainly within its discretion. However, while it is not the proper role for this tribunal to decide if the Company should commit to avoid or defer these projects, upon review of the *record it is readily apparent that the benefits of the Shorelands acquisition remain illusory, unless and until the Company has in fact made that commitment. Put simply, the benefits to ratepayers from the Shorelands acquisition can only be established if the projects do not move forward, which the Company has not met its burden to demonstrate. Accordingly, I **CONCLUDE** that NJAWC has failed to meet its burden to demonstrate that the Shorelands acquisition will provide tangible benefits to ratepayers. I **FURTHER CONCLUDE** that the Acquisition Adjustment sought by NJAWC for the Shorelands acquisition fails to meet the requirements set forth by the Board in Elizabethtown. and South Jersey Gas.*¹⁰⁵

The Initial Decision thus rests on a tautology – unless the Company commits never to build the projects, it cannot ever prove the projects were cancelled – no matter what the evidence shows. Thus, the findings in the Initial Decision are not “findings,” at all; rather, they rest solely on the Company’s purported lack of a “commitment.”

Lest there be any doubt - the Initial Decisions overturns and rewrites the evidentiary standard for administrative cases in New Jersey. Both Rate Counsel and Board Staff claimed that the Company cannot be found to have shown the requisite benefits unless it “committed” to renounce the avoided capital projects. The Initial Decision stated, “I agree with Staff and Rate Counsel.”¹⁰⁶ Now, under this new standard, record evidence is stripped of all weight and meaning unless a utility “commits” that the facts and circumstances upon which the record evidence rests will never change- no matter what. Such a standard is unprecedented. Indeed, the implication of the Initial Decision is that substantial evidence means nothing without a commitment, but

¹⁰⁴ Initial Decision at 30 (emphasis added).

¹⁰⁵ *Id.* at 38 (emphasis added).

¹⁰⁶ *Id.* at 37.

insubstantial evidence might somehow have been cured by a commitment not to proceed. The mischief that could arise under such a standard is limitless.

That this is the case is easily established by the statement above that “[t]he Company has the ability to alleviate the conditions described in Woods’s testimony which could cause the Company to revert to its original construction schedule, by committing to not proceed with the projects.”¹⁰⁷ Put another way, all that the Company need do to alleviate the Initial Decision’s contrary findings is to “waive the magic wand” of a commitment in order to turn the record of the case into an irrelevance. If the Navy Tank really needed to be replaced or the Englishtown wells really needed to be constructed, why would a commitment to not to do so be in the customers’ interest? The Initial Decision doesn’t say. The answer is that the record shows they are not needed, and the “commitment” is simply a ruse to deny recovery.

2. *The New Standard Announced by the Initial Decision is contrary to Elizabethtown Water and Howell.*

Essentially, the Initial Decision announces a new standard where, despite what the evidence proves, the Company must look inside a crystal ball and predict whether future problems, not yet known to the Company or any other party, may possibly be solved by the avoided capital projects at some unknown point in the future. Accordingly, under this newly-concocted standard, no capital project can be considered truly avoided unless a utility promises not to pursue such project in the future, no matter the circumstances. Such a standard is impossible to satisfy and is not based on any BPU precedent.

Neither *Elizabethtown Water* nor *South Jersey Gas*, both of which were cited in the Initial Decision, require any such commitment.¹⁰⁸ Likewise, *Howell* did not require such a commitment

¹⁰⁷ *Id.* at 29.

¹⁰⁸ Initial Decisions p. 34.

either. In *Howell*, the Board permitted an acquisition adjustment because the acquisition enabled NJAWC to avoid \$12.5 million in capital improvement costs. Nowhere in *Howell* did the Board require NJAWC to pledge it would never pursue the avoided capital improvement projects in the future. Moreover, in *I/M/O Petition of Consumers New Jersey Water Company*, the Board permitted a utility to recover an acquisition adjustment where the associated acquisition merely delayed capital costs rather than eliminating them.¹⁰⁹ Again, no commitment was required.¹¹⁰ In fact, the Company is unaware of any case in which such a commitment has been demanded by the Board.

Clearly, no requirement of a commitment exists nor should it. Evidence is all that is required. And New Jersey-American Water's evidence in this case is compelling and overwhelming. The Initial Decision's novel and unwise "commitment" provision should be soundly rejected by the Board.

C. The Acquisition of Haddonfield Provided Tangible Benefits to Customers and the Acquisition Adjustment Should be Allowed in its Entirety

1. The Initial Decision's Findings with Respect to Haddonfield¹¹¹ are Contrary to the Substantial Record Evidence

New Jersey-American Water presented undisputed record evidence to support the \$1,798,369 Acquisition Adjustment for Haddonfield¹¹²— the difference between the purchase price and the OCLD. The Company made a prima facie case for the benefits provided by the Haddonfield acquisition and the finding of the Initial Decision that "the record fails to demonstrate

¹⁰⁹ *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).

¹¹⁰ *Id.*

¹¹¹ On May 21, 2015, the Company acquired Haddonfield for a purchase price of \$28,500,000. The BPU approved the transaction on May 19, 2015. *I/M/O New Jersey-American Water Co., Inc. for Approval of a Municipal Consent Granted by the Borough of Haddonfield*, BPU Docket No. WE15010073, 2015 WL 3440897 (N.J.B.P.U. May 19, 2015).

¹¹² See generally P-36, Cuthbert Direct; P-24, Forcinito Direct.

that the acquisition provides benefits to existing NJAWC Customers”¹¹³ is not supported by the record. NJAWC also established by a preponderance of the evidence that the more modest \$1,798,369 Haddonfield acquisition adjustment should be recognized in rate base because the acquisition results in operational synergies and the acquisition of water supplies that benefit NJAWC customers. Thus, the Haddonfield Acquisition Adjustment merits inclusion in rate base pursuant to *Elizabethtown Water and Howell*.

Before the acquisition, only two interconnections (one bulk sale and one emergency) existed between the New Jersey-American Water and Haddonfield systems.¹¹⁴ After the acquisition, New Jersey-American Water installed 10 additional connections fully integrating the two systems and bringing the total number of connections between the two systems to 12.¹¹⁵ With the additional interconnections, the redundancy of supply feeding Haddonfield and the ability of both systems to withstand operational disruptions such as main breaks increased, making both of them more resilient.¹¹⁶ Thus, the acquisition benefits both legacy and acquired customers.

Further, the merger eliminated five dead-end water mains in Haddonfield and two dead-end mains in New Jersey-American Water’s existing system, again, providing specific benefits to legacy and acquired customers.¹¹⁷ Now, the risk of water service interruptions or water quality issues is reduced, as are the associated customer complaints.¹¹⁸

Another benefit of the acquisition is New Jersey-American Water’s decommissioning of the Cottage Avenue standpipe. Had the Company not acquired the Haddonfield system, Haddonfield would have needed to demolish the Cottage Avenue standpipe and replace it at a cost

¹¹³ Initial Decision at 30.

¹¹⁴ P-24, Forcinito Direct at 3:8-12.

¹¹⁵ P-24, Forcinito Direct at 3:12-14.

¹¹⁶ P-24, Forcinito Direct at 3:14-17.

¹¹⁷ P-24, Forcinito Direct at 3:17-19.

¹¹⁸ *Id.* at 3:17-22.

of approximately \$5,000,000, which amount does not include the costs of ongoing maintenance of the new tank.¹¹⁹ New Jersey-American Water decommissioned the standpipe and utilized existing storage facilities in the surrounding area to meet the system's storage needs.¹²⁰ In addition to the avoided costs, decommissioning the Cottage Avenue standpipe reduced the water age in Haddonfield to two days.¹²¹

An additional operational benefit of the Haddonfield acquisition was New Jersey-American Water's construction of the Atlantic Ave Lift Station which eliminated a gravity sewer main located in a swampy area of Haddonfield. The new lift station not only benefits the Haddonfield system, it also 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 in the State of New Jersey.¹²²

Further, acquiring Haddonfield allowed the Company to acquire water allocation resources and water diversion rights for the long-term benefit of its customers, including sale for resale customers, and to reduce the per-customer-cost of state-mandated water sampling requirements because it can spread them over a larger customer base.¹²³ 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.¹²⁴ The transfer of Haddonfield allocation limits to an existing NJAWC permit allows NJAWC to use

¹¹⁹ P-5, Shields Direct at 39:11-14.

¹²⁰ P-24, Forcinito Direct at 5:2-3.

¹²¹ P-24, Forcinito Direct at 5:2-11.

¹²² P-37, Cuthbert Rebuttal at 6:15-7:4.

¹²³ P-37, Cuthbert Rebuttal at 5:4-5, 6:3-12, 10-6:2; P-7, Shields Rebuttal at 16:21-17:10; P-24, Forcinito Direct at 6:17-7:2-11; P-97, Response to RCR-E-90. .

¹²⁴ P-37, Cuthbert Rebuttal at 5:4-5.

the allocation across multiple facilities and over a broader service area.¹²⁵ 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.

Notably, no party provided any evidence to dispute any of the above-described operational synergies resulting from the Haddonfield acquisition.

Although the benefits gained by Haddonfield were dwarfed by the Shorelands benefits, they were not insubstantial.¹²⁶ The numerous examples above clearly demonstrate that the Company's legacy customers directly benefitted from the Haddonfield purchase through the gain of Haddonfield's resources and infrastructure which increased water quality and reliability and improved the efficiency of the NJAWC system overall. Furthermore, the benefits to former Haddonfield customers are clearly significant, including millions of dollars in avoidable capital projects, and they, too, are now NJAWC customers. Again, as no party mustered actual evidence to oppose the Company's evidence regarding these benefits, they stand uncontested in the record. Accordingly, the Haddonfield acquisition satisfies the *Elizabethtown Water* and *Howell* standard of providing tangible benefits to customers.

2. *The Initial Decision Improperly Found that There Were No Benefits to Legacy Customers in Order to Deny the Acquisition Adjustment*

The Initial Decision claims:

the projects cited by the Company “benefit only Haddonfield sewer customers and provide no benefit to any other customers in New Jersey American’s water or sewer operations.” (RC-1 at 23.) Regarding the Haddonfield water allocation permit, Shields testified that this allocation will be useful in addressing water quality requirements associated with perfluorinated compounds (PFCs). However, this claim was successfully rebutted by Woods when he stated that “[t]hree years after the acquisition of Haddonfield system,[the Company] cannot quantify the impact

¹²⁵ P-97, Response to RCR-E-90.

¹²⁶ Not coincidentally, the Haddonfield acquisition adjustment is also much smaller.

of these groundwater quality issues or the impact that the Haddonfield acquisition may or may not have on the solution to these problem.”¹²⁷

Here again, the Initial Decision ignored the record. The Initial Decision’s claim that benefits flowed exclusively to Haddonfield customers is demonstrably false. As discussed above, Mr. Shields described many of the benefits, operational and otherwise, that flowed from the acquisition to both legacy and newly-acquired customers.

While Haddonfield customers did realize significant benefits, the record is replete with examples of the numerous operational benefits improving system reliability which flow to legacy customers (*e.g.*, better water quality with the elimination of dead ends, valuable water diversion rights in a constrained watershed, etc.) discussed above.

The record demonstrates that the Haddonfield water rights were very important to NJAWC customers. 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; these rights have already been transferred to the Company’s existing permit. Rate Counsel claimed 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.¹²⁸ 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 benefit to legacy customers.¹²⁹

¹²⁷ Initial Decision at 39.

¹²⁸ Oral Argument Trans., Nov. 21, 2019 at 49:4-16. Although at Oral Argument Rate Counsel claimed it merely provided two “examples” of specific opposition to the seven Avoided Capital Projects, these were not “examples.” They were the only arguments that Rate Counsel set forth either in the record or at Oral Argument.

¹²⁹ P-7, Shields Rebuttal 17:17-18.

With respect to Perflourinated Compounds (“PFCs”), Mr. Shields pointed out that in addition to increased water allocations, the ability to address PFCs was a subsidiary benefit of obtaining the water rights.¹³⁰ Yet the Initial Decision focuses almost entirely on that subsidiary benefit as the sole reason to deny the adjustment:

NJAWC has cited various benefits that solely benefit former Haddonfield customers while it remains unable to quantify the impact of the acquisition on its ability to address the PFC’s, which would conceivably benefit its existing customers. Accordingly, I **CONCLUDE** that the Company has failed to meet its burden to demonstrate that the Haddonfield acquisition provides tangible benefits to existing ratepayers.¹³¹

The Initial Decision’s elevation of a subsidiary benefit of the acquisition of water rights as a reason to claim no benefit from those acquired water rights is insupportable.

As discussed above, the Haddonfield acquisition included water diversion rights at a rate of 61.9 million gallons per month and 366.797 million gallons per year.¹³² The record demonstrated conclusively that the transfer of Haddonfield allocation limits to an existing NJAWC permit allows New Jersey-American to use the allocation across multiple facilities and over a broader service area.¹³³ As a result, both existing and acquired customers in various service areas benefit through increased supply. If that increased supply also helps the Company to address the PFC issue, all the better, but it was not the *sine qua non* for the acquisition of the water rights. The reason was simply to acquire increased water supply in a constrained supply area. The Initial Decision’s myopic focus on the subsidiary benefit while ignoring the main benefit is simply another reason why it should not be adopted.

¹³⁰ P-7, Shields Rebuttal at 18:14-17.

¹³¹ Initial Decision at 39.

¹³² P-37, Cuthbert Rebuttal at 5:4-5.

¹³³ P-97, Response to RCR-E-90.

Even so, the PFC discussion in the Initial Decision still misses the boat. Mr. Shields explained that the groundwater supplies in Critical Area 2 have changed significantly in water quality. These water allocations from Haddonfield are important and will be used to deal with the impacts of PFC's that NJAWC is experiencing in the region.¹³⁴ This issue is widespread throughout the State and affects NJAWC facilities, several of which are located in the area in and around Haddonfield. The Initial Decision ignores the fact that the water allocations provide significant flexibility to draw and treat water from areas that may have limited impact from PFCs and provide that water to areas that are more adversely affected.¹³⁵

Finally, the Haddonfield acquisition also provided additional interconnections which increased the ability of both systems to resist operational disruptions, such as main breaks, thus increasing their resiliency and the elimination of dead-end mains in NJAWC's existing system, reducing the risk of water service interruptions and improving water quality for legacy customers, as discussed above. These, too, are tangible benefits to existing NJAWC customers that the Initial Decision ignored.

For all of these reasons, the Haddonfield acquisition satisfied the benefits to customers test of *Elizabethtown Water* and *Howell* and the adjustment should be permitted.

D. The Company Requires the Board's Guidance on How to Respond to the Commitment Requirement Contained in the Initial Decision

The acquisitions of the Shorelands and Haddonfield systems provide tangible, significant benefits to all customers and the substantial record evidence overwhelmingly establishes the benefits to customers in full accord with *Elizabethtown Water* and *Howell*.

¹³⁴ P-7, Shields Rebuttal at 18:15-17.

¹³⁵ *Id.*

For the Shorelands system, the \$26,738,000 acquisition adjustment is more than warranted by the \$29 million of benefits from avoided capital projects; the benefits associated with deferring \$18.9 million of other capital projects for 5-10 years; and achieving the significant operational benefits discussed above. It is telling, moreover, that in addition to the opposition to the avoided capital projects resting wholly on conjecture and supposition, \$21 million of those benefits stand completely unrefuted, not even by such speculation and surmise. For the Haddonfield system, the smaller \$1,798,369 acquisition adjustment reflects the significant benefits of avoided capital costs for Haddonfield customers, the acquisition of valuable water rights for NJAWC customers and the synergies and improvements in water quality for all customers.

Under the circumstances, the Initial Decision should have recognized the overwhelming evidence that the standard for recovery of the acquisitions adjustments was satisfied fully. The Initial Decision, however, did not do so because the Company was, reasonably, not willing to commit that the cancelled projects would not need to be revisited at some indeterminate point in the future. The Initial Decision fails to point to any precedent to support the demanded commitment. As a practical matter, a commitment by NJAWC not to pursue one of the avoided capital projects would be both contrary to the evidence and wholly unnecessary.¹³⁶ NJAWC's capital plans and forecasts already factor in any number of contingencies and are also 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.). No NJAWC witness was ever asked about such a commitment. Nevertheless, on this record, and on these facts, the Company demonstrated that it has no need to pursue the avoided capital projects. The avoided capital projects are exactly as the Company has characterized them – avoided and

¹³⁶ 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.

cancelled. The Company recognized that the ALJ harbored reservations about the possible resurrection of one or more of the avoided capital projects, however unlikely and unsupported on this record that contention may be. Consequently, the Company committed that, if unforeseen future circumstances were ever to require the Company to change course and pursue one or more of the avoided capital projects, the Company would notify the Board and Rate Counsel of its intention to pursue such a project and identify that project as having been part of the basis of the acquisition adjustment which was allowed in this case. The Initial Decision, however, wholly ignored this proposed compromise.

The Company nevertheless faces a clear dilemma created by the Initial Decision. If it makes such a commitment it can recognize the benefits in rate base. If it does not, they will be lost forever.

New Jersey-American does not consider such a commitment to be necessary, wise or in accord with the last four decades of Board precedent on the jurisprudence of acquisition adjustments for water utilities. Nevertheless, if the Board is persuaded that it should now change course and adopt the reasoning of the Initial Decision, the Board is free to announce that if one or more of the projects were to be resurrected, a rebuttable presumption would be established that recovery would be denied absent a showing by the Company that ratepayers would not be harmed. New Jersey-American Water finds such a condition acceptable with the full knowledge that the acquisition of Shorelands resolved the pressure and supply problems of the Coastal North system in a manner that the projects have been rendered unnecessary. Again, however, we view the need

for such a commitment as an abnegation of the substantial evidence standard and a lamentable shortcut for the need to make reasoned decisions based upon record evidence.

E. Proposed Findings

New Jersey-American fully satisfied the *Elizabethtown Water* and *Howell* precedents for recovery of the Acquisition Adjustment in rate base.

The acquisition of the Shorelands and Haddonfield systems provide tangible, significant benefits to all customers. For the Shorelands system, the \$26,738,000 acquisition adjustment is more than warranted by the \$29 million of benefits from avoided capital projects, the benefits associated with deferring \$18.9 million of other capital projects for 5-10 years, and achieving the significant operational benefits.

For the Haddonfield system, the smaller \$1,798,369 acquisition adjustment reflects the significant benefits of avoided capital costs for Haddonfield customers, the acquisition of valuable water rights for NJAWC customers and the synergies and improvements in water quality for all customers.

Under the circumstances, the Initial Decision must be rejected because it failed to recognize the overwhelming evidence that the standard for recovering acquisitions adjustments was satisfied fully.

V. CONCLUSION

The Company respectfully asks the Board to reject the radical changes to its *Elizabethtown Water* and *Howell* standard for recognizing acquisition adjustments and the abnegation of the substantial evidence standard contained in the Initial Decision. Consistent with precedent, New Jersey-American Water has demonstrated that the acquisition of Shorelands has produced the requisite tangible benefits for legacy customers in the form of \$29 million of avoided capital spending, \$18.9 million in deferred capital spending, and a host of cost savings and operational

efficiencies, synergies and improvements. In acquiring Haddonfield, the Company gained extremely valuable water allocation rights and improved efficiency and capital requirements. Moreover, had New Jersey-American Water passed on the opportunity to acquire the Haddonfield and Shorelands systems, the solutions they offered to operational and capital improvements and efficiencies would have been lost forever.

Not only would denial of the Acquisition Adjustment here be directly contrary to that Board 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. For all the reasons stated herein, the Company respectfully requests that it be permitted to include the \$28,536,369 Acquisition Adjustment associated with the purchase of Shorelands and Haddonfield in rate base.

Dated: March 15, 2021

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