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March 22, 2021

VIA ELECTRONIC DELIVERY
Aida Camacho-Welch, Secretary
State of New Jersey, Board of Public Utilities
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Re: I/M/O the Petition of N.J. American Water Co. for Approval of Increased Tariff Rates & Charges For Water & Sewer Service, Changes in Depreciation Rates & Other Tariff Modifications
BPU Docket No. WR17090985
OAL Docket No. PUC 16279-18

Dear Secretary Camacho:

Please accept for filing this letter brief as the reply exceptions from the Division of Rate Counsel ("Rate Counsel") in the above referenced matter. Consistent with the March 19, 2020 Order of the Board of Public Utilities ("the Board") in *I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations,* BPU Docket No. 20030254, copies of this comment letter

are being filed with each person on the service list by electronic mail. No paper copies will follow.[1] Thank you very much for your attention to this matter.

PRELIMINARY STATEMENT

This case poses a simple question: Did New Jersey American Water Company ("NJAWC") meet its burden of proving that existing ratepayers will receive net benefits from NJAWC's acquisitions of Shorelands Water Company and Haddonfield's water and sewer systems? The simple answer is no. The acquired systems were not troubled at the time of their acquisition, and the evidentiary record is devoid of any support for NJAWC's asserted net benefits. The Administrative Law Judge's ("ALJ") Initial Decision recognized this truth and properly denied acquisition adjustments for both systems.

Nothing presented by NJAWC in its exceptions changes the material relevant facts, many of which are agreed to by all the parties. Nor has the governing of law changed. A utility can only recover an acquisition adjustment in rates in two limited circumstances: when the acquired system is a troubled system or when existing customers of the acquiring system will benefit. The record evidence shows that neither of these circumstances applied to the acquisitions of Shorelands and Haddonfield. The ALJ's decision is fully supported by the record and well-established law. The Board should adopt the Initial Decision in full.

ARGUMENT

a. The ALJ Properly Applied The Relevant Law That An Acquisition Adjustment Can Only Be Granted in the Limited Circumstances Where an Acquired Utility Was Troubled, or When an Acquisition Provides Net Benefits to Existing Ratepayers.

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[1] Pursuant to His Honor's requirements, a hard copy of this filing will be mailed to ALJ Gertsman.

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

The Board's policy regarding acquisition adjustments was set forth in I/M/O Petition of Elizabethtown Water Co. For an Increase in Rates, BPU Docket No. 8312-1072, 62 P.U.R. 4th 613 (N.J.B.P.U. 1984) ("Elizabethtown Acquisition Order"). In that case, the Board found that an acquisition adjustment is appropriate only when a utility can demonstrate specific benefits to existing customers, finding that "[w]e will continue to recognize the appropriateness of acquisition adjustments where a specific benefit can be shown, such as the acquiring of needed facilities which benefit the entire system." Id. at 614. In denying the acquisition of the Peapack and Gladstone Water System in that case, the Board accepted the analysis of the ALJ, whose Initial Decision found that "existing customers received no benefit from the Peapack-Gladstone acquisition…petitioner offered no evidence as to why existing ratepayers should bear the cost associated with a purchase that may be in the public interest, but does not particularly aid existing customers of the system." 11 N.J.A.R. 303, 313-14. The Board also noted an additional circumstance where acquisition adjustments may be appropriate, which was a utility's acquisition of a troubled small water company. The Board made it clear that its policy was limited to distressed systems that are "hard-pressed to provide safe, adequate and proper service" consistent with "the intent of the Small Water Company Takeover Act, N.J.S.A. 58:11-59 et seq."

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

In the present matter, the ALJ properly recognized the governing law on acquisition adjustments as set forth in the Elizabethtown Acquisition Order and the South Jersey Gas Order. In the Initial Decision, the ALJ wrote that:

> The Board denied Elizabethtown Water Company's request for acquisition adjustments related to the acquisition of two water systems, Peapack and Gladstone, but recognized an acquisition for another system. The Board explained:
>
> > We will continue to recognize the appropriateness of acquisition adjustments where a specific benefit can be

> shown, such as the acquiring of needed facilities, which benefit the entire system. Re Elizabethtown Water Co., BPU Docket No. 80276 (June 19, 1980). Reasonable incentives should be given for acquisition of small water companies which are typically undercapitalized and hard-pressed to provide safe, adequate, and proper service. Such is the intent of the Small Water Company Takeover Act, N.J.S.A. 58:11-59 et seq. In addition to the lack of a showing of a specific benefit, we have the additional factor that the system in question was acquired through competitive bidding between utilities which could only serve to enhance the purchase price in relation to original cost.
> (Id. at 2)

> The Board affirmed its acquisition adjustment policy the following year in [the South Jersey Gas order]. The Board noted that its policy was 'clearly set forth' in the Elizabethtown matter. Further, 'there the Board indicated it would recognize an acquisition adjustment only where it was proven that a specific and tangible benefit inured to ratepayers from the acquisition.' South Jersey Gas Order at 4.

The ALJ properly applied the relevant case law. As explained below, the ALJ correctly found that the Company failed to meet its evidentiary burden. Thus, contrary to NJAWC's assertions, the ALJ did not create a new standard for evaluating whether acquisition adjustments should be reflected in rates. Indeed, good public policy dictates that acquisition adjustments be limited to the narrow circumstances outlined in the Board's policy. Allowing the Company to receive acquisition adjustments above the system's current book value in this matter would send a problematic signal to both sellers and purchasers regarding future acquisitions. Acquisition adjustments are an exception to the rule that utilities can only recover a rate of return on the book value of their assets. Without any tie to the book value of the system, water utilities could purchase systems at any inflated price, knowing that they will recover any excess costs from ratepayers. This will almost certainly raise the future purchase price of acquisitions, as the seller will know there is little to no ceiling on cost and the purchaser can increase their earnings by overpaying for a system. It will significantly impinge the bargaining power of a frugal

purchaser, as the seller will know the purchaser can simply pass excessive costs on to ratepayers. For this reason, acquisition adjustments must only be granted in very limited circumstances, which have been explicitly stated in the Board's acquisition adjustment policy.

b. There is no Dispute That Either Haddonfield or Shorelands Was a Troubled Utility When Acquired.

The Company has never asserted that Shorelands was a troubled utility when acquired. Furthermore, during oral argument on November 21, 2019, the Company clarified its position regarding the issue of whether Haddonfield was a troubled utility at the time of its acquisition. Specifically, the Company conceded that Haddonfield was not troubled at the time of its acquisition, and the Company is not seeking rate recognition of the proposed acquisition adjustment on these grounds ("New Jersey American is not claiming that the acquisition adjustment should be recognized because the entities were either small or troubled.") 33T:L11-14 (11/21/19).

c. The ALJ Properly Found that NJAWC Failed to Prove By a Preponderance of the Evidence That Its Acquisition of the Shorelands System Provided Net Benefits to Existing NJAWC Customers.

In his Initial Decision, the ALJ denied the proposed acquisition adjustment of approximately $26.7 million for NJAWC's acquisition of the Shorelands system. The only factual issue before the ALJ was whether NJAWC proved by a preponderance of the evidence that certain capital projects would be avoided or deferred to a later date, and thus represent a positive benefit to ratepayers. The ALJ found that NJAWC failed to meet its burden. The ALJ stated that "I am persuaded by Woods' testimony regarding the [sic] Shoreland's Acquisition and thus FIND that the [sic] Company's has failed to demonstrate that the capital projects specified in the petition are not proceeding." Initial Decision at 28. The ALJ also found "that Woods has

presented reasonable conditions where any or all [of] the projects may proceed, which NJAWC has failed to address." Id. at 30.

Indeed, the Company's net benefits analysis is speculative and cannot meet the Company's burden of proof. For example, the Company claims that due to its acquisition of Shorelands, it can avoid the cost of rebuilding the Englishtown Wells and delay the construction of the ASR Wells for five years. These wells are designed to help alleviate capacity issues in the Coastal North System. The flaw in this claim is that the Company admitted in its testimony that the Company has capacity issues in its Coastal North System that encompasses Shorelands. P-5 at 14. Company witness Donald Shields testified that "[t]he Coastal North System has a reliable maximum day supply deficit." Id. This means that the Company struggles to meet water demand in this area on its maximum demand days. Furthermore, the Coastal North System is and will continue to be a high growth area. Given these facts, the Company could not guarantee that ratepayers would in fact receive this benefit. All of these factors add up to speculation rather than evidence supporting the Company's claims that it can avoid and/or defer well construction. Speculation does not satisfy the Company's burden of proof here.

Furthermore, as Mr. Woods testified, the Company's net benefits analysis contains certain assumptions that may not be realistic, and absent such assumptions, the Shorelands acquisition ends up as a net liability to existing ratepayers. One example of a flawed assumption in the Company's analysis relates to its Navy Tank. *RC-1* at 32-35. The Navy Tank is a 1.2 million gallon standpipe with operating range between 240 feet and 278 feet. Id. at 32. Replacement of the Navy Tank is one of the avoided projects under the Company's analysis, with an avoided cost of $3,700,000. *P-8*, Schedule FXS-1. The Company's analysis assumes that the Navy tank will remain in service for the next forty years, without needing replacement

during that time. *RC-1* at 33. The Navy Tank was built in 1951, and was already 67 years old at the time Mr. Wood testified. Id. at 34. In other words, the Company's analysis assumes the Navy Tank will continue in service until it is 107 years old, despite its current depreciation rate of only 72 years. Id.

Mr. Woods' testimony illustrates the sensitivity of the analysis offered by the Company simply by examining its assumption about the Navy Tank. As Mr. Woods demonstrated, if the Navy Tank needs to be replaced in 2023 – the end of its 72 year depreciation life – then the Shorelands acquisition transforms from an acquisition with a $6.6 million net benefit to ratepayers under the Company's analysis, to a $197,000 net cost to ratepayers. *RC-1* at 35. Simply with one reasonable change to the Company's analysis, Mr. Woods demonstrated that the Company's claim of net benefits from the Shorelands acquisition does not stand scrutiny.[2] The Company's analysis is based upon hopeful and highly speculative assumptions. If any of those assumptions prove inaccurate, the result of the cost benefit analysis changes dramatically. As the ALJ correctly concluded, an analysis built on such speculative assumptions cannot sustain the Company's burden of proof.

Furthermore, as Mr. Woods testified, unless the Company's overall capital spending is somehow capped, there is no guarantee that ratepayers will actually experience lower rates, even if the capital projects contained in the analysis remain avoided. *RC-1* at 37. Indeed, the Company has never claimed that its capital spending will be reduced as a result of acquiring Shorelands. The Company has aggressively invested in new plant in its service territory, in the amount of $868 million since its last rate case only three years prior. Id. As Mr. Woods

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

testified, absent a cap it is likely that any avoided costs will simply shift dollars elsewhere, with ratepayers being asked to pay for both the acquisition premium and the new investment. Id. Without seeing any relief in rates, customers will hardly experience a benefit from these alleged avoided projects.

The alleged benefits of the acquisition are based solely on the Company's claims that it will avoid spending on certain capital projects. *RC-1* at 31. Although the Company claims that it will avoid certain capital costs, it has never committed to doing so. Absent a commitment, there is no guarantee that these capital costs will actually be avoided, or result in lower rates for ratepayers. In its Exceptions, NJAWC claims that "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." NJAWC Exceptions at 4. They also claim that "the Initial Decisions [sic] overturns and rewrites the evidentiary standard for administrative cases in New Jersey." Id. at 28.

NJAWC's argument lacks merit. First, there is no aspect of the ALJ's Initial Decision that adopts a new "standard." The ALJ properly applied long-established case law to the facts that were part of the record before him. Indeed, most of the facts before the ALJ were entered into the record by NJAWC itself. NJAWC submitted the net benefit analysis in support of its case. NJAWC was the party claiming that these costs would be avoided as a result of acquiring Shorelands. Yet NJAWC did not want to commit to actually avoiding the costs. The ALJ used this fact, along with the testimony of Rate Counsel witness Howard Woods, to find that NJAWC did not meet its burden of proving there will be net benefits to existing ratepayers. NJAWC's unwillingness to commit to avoiding these costs goes to the weight of the evidence it presented, and the ALJ gave the evidence its proper weight. The evidence before the ALJ was that NJAWC

believed, but could not prove, that there would be a net benefit to ratepayers. The ALJ found the Company's belief to be insufficient to meet its burden of proof. The ALJ did not adopt a new "standard" here; NJAWC does not like how the ALJ weighed the evidence it presented. Disagreement with an ALJ's determination is not a basis for overturning that determination. Accordingly, and for all of the reasons noted above, the Board should uphold the ALJ's denial of an acquisition adjustment for Shorelands.

d. The ALJ Properly Found that NJAWC Failed to Prove By a Preponderance of the Evidence That Its Acquisition of Haddonfield Provided Net Benefits to Existing NJAWC Customers.

In addition to the Shorelands system, NJAWC is seeking an acquisition adjustment of approximately $1.8 million for its acquisition of the Haddonfield water and sewer systems. The ALJ properly rejected NJAWC's request applying the same case law he used to evaluate the Shorelands system, namely the Board orders in Elizabethtown and South Jersey Gas. Using this well-established body of law, the ALJ properly found that NJAWC failed to meet its burden of proving by a preponderance of the evidence that net benefits will inure to existing NJAWC ratepayers as a result of the acquisition. Initial Decision at 39. Specifically, the ALJ found that "Woods testimony was particularly compelling when he testified that he was 'not aware of any short-term synergies that would benefit existing New Jersey American ratepayers. By contrast, there are significant benefits to Haddonfield ratepayers in the short run.'" Id. at 30. The ALJ also noted that "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." Id. at 39.

The record evidence supports the ALJ's determination. The Company has failed to meet its burden of showing that the Haddonfield acquisition benefited existing customers. The

Company asserts various benefits such as the decommissioning of Haddonfield's Centre Street water treatment plant and Haddonfield's Cottage Avenue Standpipe. *P-24* at 4-5. However, as Mr. Woods testified, these asserted benefits inure only to Haddonfield customers, not other New Jersey American ratepayers as is a pre-requisite to receiving an acquisition adjustment under the Elizabethtown Acquisition Order. *RC-1* at 23.

The Company does assert one alleged benefit to existing ratepayers from the Haddonfield acquisition, the Haddonfield water allocation permit. Id. at 6. Through the testimony of Mr. Shields, the Company claims that this allocation will be useful in addressing water quality requirements associated with perfluorinated compounds (PFCs). *P-7* at 18. However, Mr. Woods successfully rebutted Mr. Shields' testimony. As Mr. Woods testified, "three years after the acquisition of the Haddonfield system, [the Company] still cannot quantify the impact of these groundwater quality issues or the impact that the Haddonfield acquisition may or may not have on the solution to these problems." *RC-84* at 3. When asked in discovery to quantify the impact of the Haddonfield acquisition on the Company's ability to address the new PFC standards, the Company could not answer, instead stating that it "is still evaluating the overall impact of the new PFC standards on the company wells and does not have an overall impact developed at this time." *RC-18, RC-19*. The Company bears the burden of proving any alleged benefits to existing ratepayers from the Haddonfield acquisition, and it has not done so.

In its Exceptions, the Company notes that the N.J. Department of Environmental Protection has transferred Haddonfield's former allocation rights to other Company-owned wells in the area and it claims that this is a clear benefit to legacy customers (Exceptions, Page 34). It is not. Rate Counsel has never disputed that this transfer was made through the consolidation of permits, but it did note that the points of diversion (i.e., the wells) were simply added to a pre-

existing allocation permit issued by NJDEP to the Company. *RC-84*, P. 3, Lines 13-16. The Company also notes that they abandoned the Center Street wells, which were previously associated with this allocation. What the Company fails to acknowledge in its Exceptions is that this merely shifts the point of diversion. Haddonfield customers needed water when they were Haddonfield customers and they still need water as New Jersey American customers. New Jersey American simply and solely made an economic decision to pay a premium for the Center Street Wells, which they promptly abandoned, and then transfer the allocation rights to other Company-owned wells so that they could avoid the cost of renovating and upgrading the Center Street Treatment Plant – a benefit to Haddonfield customers, not New Jersey American legacy customers. *PT-13*, p. 4, lines 3-17. The water needed by Haddonfield customers is still being produced at other Company wells and at the Company's surface water treatment plant in Delran for Haddonfield's benefit, not for the benefit of the legacy customers, as the Company asserts in its Exceptions.

Furthermore, the Company's initial income schedules for Haddonfield post-acquisition failed to include any production costs or the cost of capital associated with producing water from Haddonfield for sources outside of the Borough. Rate Counsel questioned the Company about this, and the Company made adjustments to its schedules to reflect the external cost of production. These adjustments identified a continuing shortfall in Haddonfield revenues relative to the revenue requirement caused by Haddonfield. *RC-84*, P. 2, Line 20 to P. 3, Line 2. There is nothing of value purchased from the Borough of Haddonfield that has served to reduce the revenue requirement for the Company's legacy customers.

On page 35 of its Exceptions, the Company implies that the transfer of allocation rights from Haddonfield's water allocation permit to a pre-existing allocation permit issued to New

Jersey American somehow resulted in an "increased supply." It did not. This alleged increase was never argued on the record, and it should not be accepted here. See N.J.A.C. 1:1-18.4(c) ("Evidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions.") Furthermore, NJDEP issued a "Minor Modification" to Permit WAP5197 where it simply added the instantaneous, monthly and annual diversion limits to the prior permit limits and it listed the three Haddonfield wells as points of diversion on the revised permit. *RC-84*, P. 3, lines 13-16. There was no increase in supply resulting from this acquisition. Instead, there was only an administrative consolidation of two independent water allocation permits. This was not a benefit to existing NJAWC ratepayers, and any argument to that effect should be rejected.

For all of these reasons, the Company failed to meet this burden of proof, and per Board policy its request for an acquisition adjustment for Haddonfield should be denied.

CONCLUSION

For all of the reasons stated above, the Board should reject the Company's exceptions, and adopt the Initial Decision denying acquisition adjustments for Shorelands and Haddonfield.

Respectfully submitted,

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By:_***Christine M. Juarez***_________
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In the Matter of the Petition of New Jersey American Water Co. Inc. for Approval of Increased Tariff Rates and Charges for Water and Wastewater Service, Change in Deprecation Rates and Other Tariff Modifications

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