

March 26, 2021

VIA ELECTRONIC FILINGAida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Re: In the Matter of the Petition of New Jersey-American Water Company, Inc. for Approval of Increased Tariff Rates and Charges for Water and Wastewater Service, Change in Depreciation Rates, and Other Tariff Modifications – Acquisition Adjustment Remand
BPU Docket WR17090985
OAL Docket No. PUC 16279-2018S

Dear Secretary Camacho-Welch:

On behalf of New-Jersey American Water Company, Inc. (“NJAWC” or “the Company”), please accept this Sur-Reply to the Reply Exceptions filed on March 22, 2021 by the Division of Rate Counsel (“Rate Counsel”) in the above-referenced matter. The purpose of this Sur-Reply is to address and correct Rate Counsel’s misapplication of the New Jersey Board of Public Utilities’ (“BPU”) long-standing legal standard for acquisition adjustments.

In the Reply Exceptions, Rate Counsel repeatedly and mistakenly asserts that NJAWC failed to meet its burden to demonstrate that the Haddonfield and Shorelands acquisitions provided “net benefits” to legacy customers. “Net benefits,” however, is not the standard for recognizing acquisition adjustments under BPU precedent. Neither *In re Elizabethtown Water Co.*¹ nor *I/M/O Petition of South Jersey Gas Co. For Approval of Increased Base Tariff Rates & Charges*² nor *In re New Jersey-American Water Co.*,³ adopted a “net benefits” standard. Rather, the proper test for

¹ 62 P.U.R.4th 613, 1984 WL 981081 (N.J.B.P.U. Sept. 24, 1984) (overruled on other grounds) (“*Elizabethtown*”).

² BPU Docket No. 843-184 (N.J.B.P.U. Dec. 30, 1985) (“*South Jersey Gas*”).

³ 1999 WL 615854 at *12, 193 P.U.R.4th 30. (N.J.B.P.U. 1999) (“*Howell*”).

recovering an acquisition adjustment in rate base is whether an acquisition provides “*specific and tangible benefits*” to customers.⁴

Rate Counsel concedes that *Elizabethtown* and *South Jersey Gas* establish the standard for recognizing acquisition adjustments.⁵ Nevertheless, Rate Counsel asserts, without any legal basis, that NJAWC cannot recover the Shorelands acquisition adjustment without making a “commitment” to avoid the capital projects cancelled by the acquisition for an undetermined period of time.⁶ However, none of the BPU precedent cited in this proceeding requires an acquiring utility to make the “commitment” that Rate Counsel and the Initial Decision seeks in order to demonstrate a specific and tangible customer benefit. Further, the notion that an avoided capital project without a “commitment” produces no benefit to legacy customers is illogical, particularly when the BPU has long recognized avoided capital projects as a benefit that is specific and tangible enough to support an acquisition adjustment.⁷

Rate Counsel’s contention that it does not advocate for a “new standard” is disingenuous.⁸ Indeed, Rate Counsel asks the BPU to abandon its own precedent under the guise of contending that the Company did not provide substantial evidence. Rate Counsel concedes that “[t]he 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.”⁹ This, however, is not the standard that the Initial Decision applied or that

⁴ See *Elizabethtown* at *614 (noting acquisition adjustments are appropriate “where a **specific benefit** can be shown”) (emphasis added); see also *South Jersey Gas* at 4; *Howell* at *12.

⁵ See Rate Counsel Reply Exceptions at 3-4.

⁶ *Id.* at 9.

⁷ In *Howell*, the BPU found that NJAWC’s acquisition of Howell resulted in “specific benefits” to the Company because it avoided \$12.5 million in capital projects. *Howell* at *13-14.

⁸ See Rate Counsel Reply Exceptions at 9-10.

⁹ *Id.* at 6.

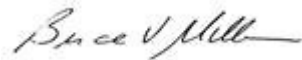
Rate Counsel advances.¹⁰ In fact, Rate Counsel concedes that NJAWC’s lack of “commitment” was the basis for the Initial Decision.¹¹

Rate Counsel’s position that NJAWC must make a “commitment” not to build an avoided capital project or must somehow cap its capital investment throughout the entire system to the detriment of all customers¹² is simply requiring the Company to prove “net benefits” -- an entirely new standard for acquisition adjustments and a rejection of BPU precedent. Accordingly, the Company respectfully requests that the BPU uphold Elizabethtown, South Jersey Gas and Howell and find that the Company established by a preponderance of the evidence the specific and tangible benefits of the Shorelands and Haddonfield acquisitions.

Dated: March 26, 2021

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Respectfully submitted,



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¹⁰ When no party contested five of the seven avoided projects, or \$21 million of the \$29 million in avoided costs, the record belies Rate Counsel’s claim that the ALJ was merely “weigh[ing]” the evidence. *See id.* at 9-10.

¹¹ *Id.* at 6 (“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....”).

¹² *See* Rate Counsel Reply Exceptions at 8-9. Although not addressed in the Initial Decision, it is important to note that neither *Elizabethtown* nor any other BPU decision cited in this proceeding require that customers see relief in rates from the cancelled projects or require some sort of spending cap on investment to demonstrate a customer benefit as asserted by Rate Counsel.