

**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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MOTION OF PETITIONER NEW JERSEY-AMERICAN WATER COMPANY, INC. FOR LEAVE TO SUBMIT SUR-REPLY TO DIVISION OF RATE COUNSEL’S REPLY EXCEPTIONS

Petitioner New Jersey-American Water Company, Inc. (“New Jersey-American Water”, “NJAWC” or the “Company”), by and through its undersigned counsel, respectfully requests that the New Jersey Board of Public Utilities (“BPU” or the “Board”) allow the Company to submit a sur-reply to the Division of Rate Counsel’s (“Rate Counsel”) reply exceptions to the March 2, 2021 Initial Decision of Administrative Law Judge Jacob S. Gertsman in the above-referenced proceeding. In support of this motion, NJAWC avers as follows:

1. New Jersey-American Water is seeking rate base recognition for Acquisition Adjustments of \$1,798,369 for the Borough of Haddonfield’s Water & Sewer System (“Haddonfield”) and \$26,738,000 for Shorelands Water Company, Inc. (“Shorelands”).
2. On March 2, 2021, the ALJ issued an initial decision regarding treatment of the Acquisition Adjustments (the “Initial Decision”). In the Initial Decision, ALJ Gertsman stated that NJAWC did not meet its burden to demonstrate that the Shorelands acquisition or the Haddonfield acquisition provided “tangible benefits” to customers and that the acquisitions failed to meet the BPU’s standard for recognizing acquisition adjustments as set forth in *I/M/O Elizabethtown Water Company*, BPU Docket No. 8312-1072, 62 P.U.R. 4th 613, Order dated

September 24, 1984, (N.J.B.P.U. 1984) (“*Elizabethtown*”) and *I/M/O Petition of South Jersey Gas Co. For Approval of Increased Base Tariff Rates & Charges*, BPU Docket No. 843-184, Order dated December 30, 1985.

3. On March 15, 2021, the Company filed with the BPU Exceptions to the Initial Decision. In its Exceptions, the Company argued, in relevant part, that it satisfied its burden to demonstrate that the Shorelands acquisition resulted in specific, tangible benefits to customers because it allowed NJAWC to avoid a number of previously-planned capital projects that would be required absent the acquisition (the “Avoided Capital Projects”).

4. On March 22, 2021, Rate Counsel filed with the BPU its Reply Exceptions. In the Reply Exceptions, Rate Counsel misstates the BPU’s long-standing *Elizabethtown* standard by asserting that NJAWC failed to meet its burden to demonstrate that the Haddonfield and Shorelands acquisitions provided “net benefits” to legacy customers.

5. Neither *Elizabethtown* nor any other BPU precedent on acquisition adjustments cited in this proceeding, however, set forth a “net benefits” standard.

6. The Reply Exceptions further claim that NJAWC cannot prove that the Shorelands acquisition provided “net benefits” without making a “commitment” to not build the Avoided Capital Projects despite the substantial record evidence that the Shorelands acquisition obviated the need for such projects or by offering relief in rates from the Avoided Capital Projects by capping its capital investment in some way.

7. 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 customers is simply requiring the Company to prove “net benefits” -- an entirely new standard for acquisition adjustments and a rejection of BPU precedent.

8. By this motion, NJAWC hereby requests that it be granted leave to file a sur-reply in response to the Reply Exceptions in order to address Rate Counsel’s baseless attempt to create a new legal standard for adjudicating acquisition adjustments.

9. The Company requests that this motion be granted in light of the important policy issue to be decided by the BPU on the record of this litigated matter. As noted above, Rate Counsel calls for the BPU to disregard the legal standard in *Elizabethtown* in favor of a new “net benefits” test. Rate Counsel provides no citation or legal support for its new test.

10. If the BPU adopts Rate Counsel’s newly-invented standard, such a departure from established BPU precedent would have wide-ranging implications for all utilities in the State and accordingly could impact all future utility acquisition activity.

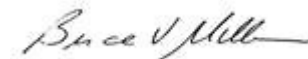
11. Thus, the Company respectfully requests that it be provided an opportunity to address Rate Counsel’s mischaracterization of the established BPU precedent on acquisition adjustments through a sur-reply.

Dated: March 26, 2021

Respectfully submitted,

Christine Soares
Corporate Counsel
American Water – Eastern Division
1 Water Street
Camden, New Jersey 08102
Tel: (856) 955-4879

By:



Bruce V. Miller
Sarmili Saha
Cullen and Dykman LLP
One Riverfront Plaza
Newark, New Jersey 07102
Tel: (516) 296-9133

*Attorneys for Petitioner New Jersey-
American Water Company, Inc.*