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December 11, 2020

VIA EMAIL AND CERTIFIED MAIL

State of New Jersey
Board of Public Utilities
Office of the Secretary
44 South Clinton Avenue
3th Floor, Suite 314
Trenton, NJ 08625-0350
Attn: Hon. Aida Camacho-Welch, Secretary of
the Board
Aida.Camacho@BPU.nj.gov

**Re: IN THE MATTER OF PETITION OF 68-72 FRANKLIN PLACE, LLC
AND THE VILLAGE COURTYARD CONDOMINIUM ASSOCIATION
BPU Docket No. WO20110723
Letter Brief in Support of Motion for Leave to Intervene**

Dear Secretary Camacho-Welch:

This firm represents New Jersey-American Water Company, Inc. (“NJAW”). Please accept this letter brief in support of NJAW’s motion for leave to intervene in the captioned matter.

Motion to Intervene Standard

“A motion for leave to intervene may be filed at any time after a case is initiated.” *N.J.A.C.* 1:1-16.2(a). “If made before a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case.” *N.J.A.C.* 1:1-16.2(b).

“Any person or entity not initially a party, who has a statutory right to intervene *or who will be substantially, specifically and directly affected by the outcome of a contested case*, may on motion, seek leave to intervene.” *N.J.A.C.* 1:1–16.1 (emphasis added). Under *N.J.A.C.* 1:1-

16.3(a), the following factors are relevant to a motion to intervene:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

The "application of these standards involves an implicit balancing test." *In the Matter of the Application of NJ Land, LLC Seeking a Declaratory Judgment Pursuant to N.J.S.A. 52:14B-1 Et. Seq. or a Waiver Pursuant to the Waiver Rule, N.J.A.C. 14:1-1.2(B)*, QO16040382, 2016 WL 4505905, at *2 (N.J. Bd. Reg. Com. Aug. 24, 2016). The intervener's interest should be "specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case." *Id.*

The Petition in this matter makes clear that NJAW will be "substantially, specifically and directly affected by the outcome" of this case. Given that the Petition is specific to the water meter service charge to Petitioner for water provided by NJAW, NJAW's interest is different from any other party. Because the Petition focuses on communications between Petitioners and NJAW, NJAW's inclusions will indeed clarify – not confuse – the facts in this matter.

The Petition

The Petition in this matter makes clear that NJAW will be "substantially, specifically and directly affected by the outcome" of this case. The Petition specifies in its preamble that Petitioners petition the BPU "for relief from the industrial meter service charge set forth in New Jersey American Water Company, Inc.'s 'Tariff for Water and Wastewater Service'." (Petition, Preamble).

The Petition identifies three "relevant parties": 68-72 Franklin Place LLC ("Franklin Place"), The Village Courtyard Condominium Association, Inc. ("Association"), and **New Jersey American Water Company, Inc.** (Petition, ¶¶ 1-3).

The Petition alleges that, in connection with the development of the Condominium developed by Franklin Place, Franklin Place and NJAW communicated regarding upgrades and extensions to the existing water system at the property necessary to support the Condominium's development. (Petition, ¶ 12). The Petition states that the "focus of this Petition is that portion of the [water system extension] requiring a water main upgrade which, in turn, called for the installation of an 8-inch industrial meter," and that NJAW advised Petitioners the meter service charge increase for the industrial meter would be nominal. (Petition, ¶¶ 15, 16).

Now that the Condominium has been completed, Petitioners allege that the water meter service charge is “more expensive than represented by NJAW” and the specific meter is unnecessary. (Petition, ¶¶ 20, 23). Based on these allegations, Petitioners “respectfully urge the BPU to grant relief from the Service Charge pursuant to *N.J.S.A.* 48:2-21 and *N.J.A.C.* 14:3-1.3(d), or to otherwise enter an appropriate order requiring New Jersey American Water to replace the Industrial Meter with a less costly meter or alternative option suitable to the residential development.” (Petition, ¶ 25; *see also* Petition, ¶¶ 87-88 (urging the BPU in the Petition’s “Relief Requested” section (1) to “order NJAW to not enforce” the meter charge against the Association or (2) to apply special rates to the NJAW meter charge against the Association)).

NJAW’s Motion to Intervene Should be Granted

While NJAW denies that Petitioners are entitled to the relief they seek in the Petition, if any of the requested relief were granted to Petitioners, NJAW would be “substantially, specifically and directly affected.” *N.J.A.C.* 1:1-16.1. That is, both forms of alternative relief requested by Petitioners – relief from the Service Charge pursuant to *N.J.S.A.* 48:2-21 and *N.J.A.C.* 14:3-1.3(d), or an order requiring NJAW to replace the water meter – directly and uniquely affects NJAW. To be sure, NJAW is the *only* party outside of Petitioners that they listed in the Petition as a “relevant” party. Finally, because the Petition focuses on communications between Petitioners and NJAW, NJAW’s inclusions will indeed clarify – not confuse – the facts in this matter. At bottom, the relevant factors of *N.J.A.C.* 1:1-16.3(a) weigh heavily in favor of NJAW’s intervention in this matter. NJAW’s interest in this matter is “specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case.” *In the Matter of the Application of NJ Land, LLC*, 2016 WL 4505905, at *2.

Accordingly, NJAW respectfully requests that its motion for leave to intervene be granted.

Respectfully submitted,
ARCHER & GREINER
A Professional Corporation

BY: /s/ Josiah Contarino
Josiah Contarino

cc: All Parties on Service List

PROOF OF SERVICE

I, Josiah Contarino, hereby certify that on this 11th day of December 2020, New Jersey-American Water Company, Inc.'s motion for leave to intervene was served upon the parties included in the below service list via regular mail.

/s/ Josiah Contarino
Josiah Contarino

**IN THE MATTER OF PETITION OF 68-72 FRANKLIN PLACE, LLC AND THE
VILLAGE COURTYARD CONDOMINIUM ASSOCIATION
SERVICE LIST
BPU DOCKET No.: WO20110723**

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