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January 4, 2022

VIA EMAIL ONLY

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Ste. 314
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of the Petition of New Jersey American Water for a
Determination Concerning the Fenwick Water Tank Pursuant to N.J.S.A.
40:55D-19
Docket No. _____**

Dear Secretary Camacho-Welch:

Please find the Petition of New Jersey American Water Company (“NJAW” or “Company”) appealing a decision of the Bernardsville Township Zoning Board of Adjustment denying the Company’s application for the replacement of an existing water tank with a newly constructed water tank (the “Water Storage Tank”) which is necessary for NJAW to continue to provide safe, adequate, and reliable water service in the NJAW service territory in the area. The Company respectfully requests, pursuant to N.J.S.A. 40:55D-19, that the Board determine that, as further described in the attached Petition and exhibits, the construction of the proposed Water Storage Tank, at 426 Mendham Road, is for the benefit of the Company’s residential, institutional, and commercial consumers within the Company’s service area in the Borough of Bernardsville and neighboring municipalities located in Somerset and Morris County; is necessary to provide water storage in order to maintain system integrity and reliability for water utility service, including adequate pressure and capacity for fire suppression; to comply with NJDEP requirements for gravity storage, and, therefore, is reasonably necessary for the service, convenience or welfare of the public; and that no alternative site or sites are reasonably available to achieve an equivalent public benefit. NJAW therefore requests that the Board issue an order concluding that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Municipal Land Use Law of the State of New Jersey shall not apply to the proposed Water Storage Tank, and authorizing NJAW to construct the Water Storage Tank as set forth in the Petition and exhibits.

Aida Camacho-Welch, Secretary
Board of Public Utilities
January 4, 2022
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Copies of the Petition and exhibits, are also being provided via email to all individuals listed on the attached Service List.

Kindly acknowledge receipt of this filing. Thank you for your consideration in this regard.

Respectfully submitted,

A handwritten signature in blue ink, consisting of stylized initials 'JAB' enclosed within a large, loopy oval shape.

JAMES A. BOYD, JR., ESQ.

JAB:ddj
Enclosures

cc: Attached Service List

**IN THE MATTER OF
THE PETITION OF NEW JERSEY AMERICAN WATER COMPANY
FOR A DETERMINATION CONCERNING
THE FENWICK WATER TANK PURSUANT TO N.J.S.A. 40:55D-19
DOCKET NO: _____
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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE PETITION OF : PETITION
NEW JERSEY AMERICAN WATER :
COMPANY :
FOR A DETERMINATION CONCERNING :
FENWICK WATER TANK : DOCKET NO.
PURSUANT TO N.J.S.A. 40:55D-19 :
:**

**To: THE HONORABLE COMMISSIONERS OF
THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

Petitioner, New Jersey American Water Company, Inc. (“Petitioner,” “NJAW” or the “Company”), respectfully petitions the New Jersey Board of Public Utilities (the “Board” or “BPU”), pursuant to N.J.S.A. 40:55D-19, as follows:

1. NJAW appeals to the Board from a decision of the Borough of Bernardsville Zoning Board of Adjustment (“Zoning Board”) denying the Company’s application for approvals for the construction of a proposed Water Storage Tank at 426 Mendham Road in the Borough of Bernardsville, New Jersey (“Bernardsville”). NJAW respectfully requests, pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:2-23, that the Board determine that the construction of the Water Storage Tank is necessary for the benefit of the residents of Bernardsville and neighboring municipalities in Somerset and Morris County, as more fully described herein, is: (a) necessary to provide adequate and reliable water capacity and pressure for NJAW’s rate-paying customers; and (b) necessary for the public safety to maintain proper water pressure and capacity for fire suppression in the area; and that no alternative site or sites are reasonably available to achieve an equivalent public benefit. Accordingly, NJAW requests that the Board issue an Order concluding that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Municipal Land Use Law of the State of New Jersey (the “MLUL”) shall not apply to the proposed Water Storage

Tank, and the Company may proceed with the construction of the Water Storage Tank as described in this Petition and accompanying exhibits.

I. BACKGROUND

2. NJAW is a corporation duly organized under the laws of the State of New Jersey, and is a public utility engaged in providing water utility service, and thereby subject to the jurisdiction of the Board, and has a principal business office located at One Water Street, Camden, NJ 08012. As a regulated water utility company, NJAW provides water utility service to approximately 657,000 customers in New Jersey including 3,000 in Mendham Township, Mendham Borough and the Borough of Bernardsville which will be served by the proposed Water Storage Tank.

3. Communications and correspondence relating to this filing should be sent to:

Donald C. Shields

Vice President and Director of Engineering
New Jersey American Water Co. Inc.
One Water Street
Camden, NJ 08102
856-549-8525
donald.shields@amwater.com

Niall J. O'Brien, Esquire

Archer & Greiner P.C.
1025 Laurel Oak Road
Voorhees, NJ 08043
856-616-2696
nobrien@archerlaw.com

4. This Petition is accompanied by the proposed Water Storage Tank information and the following Exhibits, which are attached hereto and made part of this Petition:

Exh. P-1 – Site Plans Prepared by Buchart Horn, revised through March 25, 2021

Exh. P-2 – Truncated Transcript of Bernardsville Zoning Board of Adjustment – Final Vote on October 4, 2021 and accompanying memorializing Resolution for Application No. 20-001, dated December 17, 2021 voted for adoption on December 6, 2021

5. NJAW is serving notice and a copy of this filing, together with a copy of the annexed Exhibits being filed herewith, upon those individuals identified in the attached service list, including the Director, Division of Rate Counsel, the Director, Division of Law – Office of the Attorney General, and the Clerk of the Borough of Bernardsville.

6. As a water “public utility” as that term is defined in N.J.S.A. 48:2-13, NJAW is subject to regulation by the Board for the purpose of assuring that it provides safe, adequate and proper water service to its customers pursuant to N.J.S.A. 48:2-23. As a result, NJAW is obligated to, and does, maintain its public utility infrastructure in such condition as to enable it to meet its regulatory obligations to provide the requisite service and to comply with applicable Regulatory requirements. That infrastructure consists of the properties, infrastructure, facilities and equipment within NJAW’s water distribution system throughout its service territories.

7. NJAW is committed to providing safe, adequate and proper service in accordance with N.J.S.A. 48:2-23. Consistent with industry practice and its ordinary capital spending planning cycle, NJAW engages continuously in the construction, operation and maintenance of its public utility infrastructure, including the properties, transmission and distribution infrastructure, Treatment Plants, Water Storage Tanks and Booster Stations, and other facilities and equipment that comprise the water production and distribution system utilized to serve the approximately 657,000 customers throughout the NJAW service territories throughout the State,

and the proposed Water Storage Tank will ensure proper service for approximately 3,000 customers in the surrounding area. This effort includes the replacement, reinforcement and expansion of the Company's infrastructure, (*i.e.*, its property, plant, facilities and equipment) to maintain the safety and reliability of its water distribution system and to ensure continued safe, adequate, reliable, and proper service.

8. In furtherance of its commitment to maintain the reliability and safety of its water distribution system, NJAW seeks with this Petition, Board authorization pursuant to N.J.S.A. 40:55D-19, and requests that the Board determine that the construction and installation of the proposed Water Storage Tank is necessary for the service, convenience or welfare of the public, including public safety, and that no alternative site or sites are reasonably available to NJAW that would achieve an equivalent public benefit. As demonstrated below, and in the accompanying exhibits, the Water Storage Tank is required in order to maintain the integrity and reliability of NJAW's local distribution system due to, in large part, the impending expiration of an existing water purchase contract whereby NJAW could purchase 1.0 MGD from the Morris County Municipal Utilities Authority ("MCMUA"). MCMUA has given notice to NJAW that it is terminating that contract. NJAW and MCMUA have discussed extensively the implications of the termination of that contract and MCMUA has informed NJAW that it can no longer supply the previous volume of water but can continue to supply 100,000 GPD effective January 6, 2022. This will result in a reduction of available supply from 1.0 MGD to 0.1 MGD which represents a significant shortfall in NJAW's water supply that must be replaced in order to provide adequate water capacity to serve the area; thus, the Water Storage Tank is necessary to maintain adequate capacity and sufficient water pressure for reliable service during peak demand and for fire suppression needs. The location of the proposed Water Storage Tank is on the same site as

NJAW's existing water storage tank and much of the necessary water mains and other infrastructure around the tank has been replaced and upgraded to distribute water from Storage Tank directly and seamlessly into the existing water distribution system. The proposed location for the Water Storage Tank is ideal in every respect. There are no reasonable alternative locations for the necessary Storage Water Tank and if NJAW was forced to find an inferior alternative site for the Water Storage Tank then it would come at a significant cost to ratepayers and would unreasonably, and indefinitely delay the construction and eventual operation of the Tank. As described in greater detail below and in exhibits, while no reasonable alternative site exists, installing the Water Storage Tank at a different location would require purchasing land in an area where land value is among the most expensive in the region, new distribution infrastructure would need to be designed, purchased and installed, and new Applications for permits and local approvals would require significant time and resources with no guarantee of final approval. Indeed, the local municipal Zoning Board denied approval and forced NJAW to reluctantly file this Petition as a necessary last resort. By granting approval of this Petition, the BPU will save ratepayers a significant amount of money by allowing the Water Storage Tank to be connected to existing infrastructure in the ideal location on land that NJAW already owns. Perhaps more importantly, a decision by the BPU to approve this petition will allow NJAW to install the Water Storage Tank in the shortest possible timeline to reduce the true threat to public safety and welfare as the existing water purchase agreement expires and NJAW faces a shortfall in supply that would significantly impact its ability to adequately and safely provide the volume and pressure required by homes, business, and fire departments in the area.

II. BERNARDSVILLE, FENWICK WATER STORAGE TANK DESCRIPTION

9. The Proposed Water Storage Tank would be installed on the same property, in the same location as an existing tank, which is currently owned by NJAW. This property is approved

land use for public water storage by the NJDEP pursuant to NJAC 7:10 Safe Drinking Water Act Rules, specifically NJAC 7:10-11.11 Distribution storage requirements. The proposed Water Storage Tank is also within the approved land use.

10. The proposed Water Storage Tank will be located on Block 5, Lot 5, which is a 17,667 square foot property setback from Mendham Road and served by an existing access easement. The proposed Water Storage Tank will occupy a development footprint of 4,645 square feet of impervious coverage (which represents an increase of only 1,335 square feet over the existing tank) and will be 83 feet in height to the top of the handrail and antenna (while the existing tank is 56 feet to the top of the antenna) and will be sized to have a capacity of 750,000 gallons which represents a needed increase from the existing capacity of 240,000 gallons. The proposed tank and site improvements are shown on Exhibit P-1 (Site Plans)

11. This location has the necessary ground elevation to maintain the required storage volume at or above the required minimum pressure of 20 psi for highest customer served. Given the ground elevation is 751.5 feet at the tank site, the pedestal of the Water Storage Tank must be 26.5 feet high (water level no lower than elevation of 778 feet) to assure 20 psi is maintained at the highest customer served should the fire storage reach the bottom level in a fire emergency. Beyond the tank pedestal, the first 19 feet of the height of the Water Storage Tank itself is necessary to provide 250,000 gallons of water storage (the "Fire Reserve Zone"). Above the Fire Reserve Zone, the next 21 feet in tank height provides 500,000 gallons of storage (the "Equalization Storage Zone") to provide 32 psi minimum during peak day demand conditions. Above the Equalization Storage Zone, the Water Storage Tank has a further 16.5 feet of height consisting of the curved roof, a handrail and "SCADA" antenna. The total height is the reasonable minimum of 83 feet that is required for the Water Storage Tank to serve its needed purpose.

Further, even if a suitable vacant property could be found, any reduction in the elevation of that property significantly affects the necessary height of the tank.

III. NEED FOR THE PROPOSED BERNARDSVILLE FENWICK WATER STORAGE TANK

12. The existing tank only has a total storage of 0.24 MG and has only a minimal amount of daily storage and fire storage. In the event of a fire emergency in the existing condition, only the portion of daily storage would be available for fire suppression with only pump through volume from an existing outdated Booster Station known as the Tower Mountain Booster Station and by gravity from the expiring MCMUA interconnection. As more fully described in the testimony of Bryan Slota, NJAW's Senior Engineering Project Manager and Dana Wright, NJAW Team Lead, Asset Planning (Official Hearing Transcripts will be provided by the petitioner upon request), the operational need for the Water Storage Tank arises from NJAW's need to provide the necessary storage volume, pressure, and gravity storage as required by NJDEP Regulations.

13. The Water Storage Tank would be installed directly to newly upgraded distribution infrastructure which was designed to accommodate the increased water tank capacity. The design for the proposed Water Storage Tank follows good water industry practice, NJDEP Regulations and is generally in accordance with the Standards and Guidelines set forth in AWWA Manuals M32 (Computer Modelling of Water Distribution Systems) and M42 (Steel Water Storage Tanks) in that the proposed Water Storage Tank (i) equalizes storage based upon 20% of 2035 projected peak demand of 2.5 MGD; with (ii) fire storage of 250,000 gallons based upon Insurance Services Office (ISO) need for non-residential fire flows for schools and commercial properties with a minimum distribution pressure of 20 PSI at the bottom elevation for Fire Reserve Storage; (iii) provides a minimum distribution pressure of 30 PSI for Equalization Storage above Fire Reserve Storage; (iv) is designed in accordance with the manufacturer's standard 750,000 gallon, Fluted

Column Elevated Tank dimensions; and (v) will be the only gravity storage mechanism in NJAW's Mendham Lower Gradient to comply with N.J.A.C. 7:10-11.11(a)2.

14. The bottom water level of the fire storage (fire reserve) must be no lower than 778 feet to maintain 20 psi or greater during a fire emergency at a ground elevation of 722 feet for service to the highest customer served. The low water level of the daily water volume must be no lower than 791 feet to maintain at least 30 psi on a daily basis at the highest customer served. Thus, the ground elevation at the location for the Water Storage Tank is critical for the Tank to serve its needed purpose. To accommodate the 0.75 MG storage volume, and maintain the stated pressures, the water volume must be 40 feet high for a tank diameter of 64 feet. 64 feet is a standard tank diameter and is the maximum diameter that will fit the footprint of the existing tank.

15. Present peak day demands in the Mendham low Gradient result in an inter-zone transfer flow of approximately 2.0 MGD. The reliable supply capacity from ground water, Tower Mountain pump station and the MCMUA interconnection is 1.9 MGD, resulting in a deficit of 0.1 MGD. MCMUA supplies 1.0 MGD of the 1.9 MGD reliable supply capacity. Projected 2035 demand conditions indicate peak day demand inter-zone transfer flow will increase to approximately 2.5 MGD, with a corresponding reliable supply capacity deficit increase of 0.5 MGD.

16. NJAW had a water supply purchase contract with the Morris County Municipal Utility Authority "MCMUA" that is being terminated by the MCMUA on January 6, 2022. Although MCMUA has agreed to provide a de-minimus quantity of water that is a 90% reduction in available supply from MCMUA (reduced from 1.0 MGD to 0.1 MGD), the reliable supply capacity deficit will be 1.0 MGD without the Water Storage Tank and an associated pump station known as the Oak Place Booster Station.

17. The existing tank is no longer adequate for storage, safety and reliability needs and with no reasonable alternative source of water supply to negate the need for constructing the Water Storage Tank. In order to maintain adequate pressures and flows, the relevant Mendham Low Pressure Gradient would need to operate as a closed system strictly off the under construction, Oak Place Booster pumps (as described below) with no pressure equalization storage nor pressure relief to atmosphere. The existing Fenwick Tank would remain isolated from the distribution system causing the Mendham Low Gradient to be at greater risk of water main breaks due to amplified and more frequent transient pressure conditions, placing the customers at a greater risk of service interruption that would necessitate boil water advisories. Further, with no operable gravity storage in the Mendham Low Pressure Gradient, the water system will be operated out of regulatory compliance in accordance with N.J.A.C. 7:10-11(a)2, Distribution Storage Requirements that states “A system designed to provide for fire protection shall, in addition, provide gravity storage”.

18. Through its Asset Planning process and after a review of the entire local system, NJAW adopted a strategy involving three necessary components to facilitate conveyance, storage, and distribution of water for both domestic and fire service to the residents affected by the loss of water from the imminent reduction of the MCMUA supply: (i) new underground pipelines for increased flow capability have been installed by NJAW; (ii) a new Booster Station known as the Oak Place Booster Station is under construction in the Borough of Bernardsville with appropriate approvals from the local Zoning Board to convey needed water into the Mendham Lower Gradient; and (iii) the Fenwick Water Storage Tank to provide for needed storage from that new supply during peak demand and for fire suppression and to provide gravity storage required by NJDEP Regulations.

IV. SITE SELECTION AND ALTERNATIVE SITE ANALYSIS

19. As mentioned above, there is no reasonably available alternative site for the Water Storage Tank that is better suited to locate the facility based on every reasonable consideration. The existing tank has been located in this same location for many years and was presumably located by NJAW's predecessor Municipal Utilities Authority based on a thorough review of all relevant engineering factors which still apply today based on the topography and the development in the surrounding area since the existing tank was installed. However, the existing tank is no longer adequate for storage, safety and reliability needs. Furthermore, the infrastructure to distribute water from this site already exists and is now capable of handling and distributing, the supply of water from the under-construction Oak Place Booster Station without any substantial additional changes to local water distribution infrastructure within the Mendham Low Gradient other than the proposed Water Storage Tank. In plain words, the Proposed Water Storage Tank can now be plugged into the system as soon as it is installed. The Company currently owns the land which is at an ideal elevation for the proposed Water Storage Tank and the associated distribution infrastructure exists on the site and is sufficient to handle the increased pressure and flow. Finally, the location of the proposed Water Storage Tank will simply replace the old tank rather than disturb any other location.

20. The cost to ratepayers would be substantial if NJAW were to be forced to locate the Water Storage Tank in an alternate location and any potential alternate location will be inferior to the proposed location. There are also significant risks associated with any inferior potential alternative sites including the cost of purchasing the land (if a land owner is willing to sell at all), the significant risk that local approvals could not be obtained for the alternative location, and the cost of new infrastructure to distribute the water from an alternative water tank site into the existing water utility distribution system.

21. Finally, in this regard, although the proposed Water Storage Tank is a conditionally permitted use pursuant to the Borough of Bernardsville Zoning Ordinance, a minimum of five (5) acres is required within the Zone where property prices are extremely high. Importantly, the properties in the adjacent Borough of Mendham are also located in a residential zoning district that also requires a minimum of five (5) acres in size, but in which Public Utility facilities are **not** permitted by the Borough of Mendham Zoning Ordinance. Therefore, even if NJAW were to locate a suitable property that could be acquired, the cost of that acquisition would be very significant and there would be a good possibility that the relevant Zoning Board would also deny NJAW's application for any alternative site.

22. More importantly, this is an emergent matter. MCMUA has indicated that it will terminate the water purchase contract in January 2022 and will shortly thereafter, phase out the supply of water to NJAW. Further, MCMUA has indicated that it no longer has the capacity to continue to provide the amount of water required to for NJAW to continue to provide safe, adequate and reliable water utility service. NJAW, while reviewing potential alternative sites, also worked in earnest to attempt to renew the water purchase agreement with MCMUA, but was only able to secure 3.1 MGM (or 0.1 MGD), a 90% reduction. NJAW's analysis of alternatives in this regard included the attempt to resolve this safety and service issue with an alternative source analysis. There is no reasonable alternative source of water supply to negate the need for constructing the proposed Water Storage Tank at this location and the Oak Place Booster Station also within Bernardsville. This Water Tank is necessary and this particular site is necessary to provide proper service.

23. There are no alternatives sites that are as suitable as to the proposed site. NJAW conducted a review of the surrounding area and did not find any locations that could certainly be

purchased, permitted, and accommodate the engineering requirements that are necessary to provide safe, adequate, and reliable service to the service area without the need to, for example, attempt to purchase properties containing single family homes or those encumbered by Green Acres Restrictions. The cost of acquiring and/or using such property would be significant for NJAW's ratepayers with no guarantee that the proposed Water Storage Tank would meet the approval of the relevant Municipal Zoning Board as discussed above.

V. JURISDICTION AND REGULATORY STANDARD FOR APPROVAL

24. Bernardsville's land use ordinances and regulations permit, under certain circumstances, the installation and operation of public utility facilities, public service infrastructure, public purpose uses and public improvements. Within the relevant R-1-10 Residential Zoning District, Public Utility Facilities are permitted as a Conditional Use and subject to Conditional Use Approval and Site Plan Approval by the Bernardsville Planning or Zoning Board as the case may be. The local Municipal Land Use Ordinances, Site Plan Review Ordinances and other Ordinances and regulations applicable to and affecting the proposed development, have been enacted pursuant to the authority of the MLUL, N.J.S.A. 40:55D-1 et seq.

25. On March 10, 2020, NJAW filed an application with the Bernardsville Zoning Board, requesting Conditional Use Approval, Variances from Conditional Use Standards, Preliminary and Final Major Site Plan Approval and Bulk Variance Approvals for the development of the Water Storage Tank. Around that same time, NJAW filed an application with the same Zoning Board requesting the relevant approvals for the development of the Oak Place Booster Station and attended a series of Zoning Board hearings that lasted for almost two years beginning in November of 2020 and culminating in October of 2021. The Bernardsville Zoning

Board's final vote for adoption of the enclosed, December 17, 2021, Resolution denying NJAW's application related to the Water Storage Tank took place on December 6, 2021.

26. Importantly, the Proposed Site is located in the R-1-10 Zone and, as set forth in its application and as demonstrated in testimony at the numerous Zoning Board hearings, the Water Storage Tank is a conditionally permitted use at the location and, should also be deemed an inherently beneficial use. NJAW further demonstrated before the Zoning Board the suitability of the proposed site and that there are no alternative sites reasonably available, even though it had no obligation to do so (because the Water Storage Tank is a permitted Conditional Use.

27. The first Bernardsville Zoning Board hearing on NJAW's application took place on November 16, 2020 and subsequent hearings were conducted on March 1, 2021; April 5, 2021; June 21, 2021; August 2, 2021; September 20, 2021; and October 4, 2021. During those seven (7) hearings, the Company presented testimony from several witnesses including: Bryan Slota, Senior Project Engineer; Edward DiMond, P.E., Buchart Horn; Vincent Monaco, Manager, Asset Planning; Dana Wright, Team Lead, Asset Planning; and Tiffany Morrissey, PP. In tandem with those hearings, NJAW also submitted an Application to the Bernardsville Zoning Board of Adjustment for the Oak Place Booster Station which was ultimately approved. Hearing transcripts from any or all of the above-referenced testimony will be provided to BPU upon request.

28. NJAW made significant adjustments to its original site plan, and offered to make others, based on comments and concerns raised by the Board and members of the public during the numerous hearings. For example, additional and enhanced landscaping was proposed; the storm drainage features were revised and NJAW offered to locate additional plantings on a neighboring property. After a prolonged series of extensive hearings at which NJAW's counsel

and witnesses responded to every question and concern raised by the Board and the public, the Board denied NJAW's application on October 4, 2021 unanimously, which was memorialized in a Resolution dated December 17, 2021 which the Zoning Board voted to be adopted on December 6, 2021 (Exhibit P-3).

29. As a result, pursuant to N.J.S.A. 40:55D-19, NJAW is Petitioning the Board with respect to the Zoning Board's decision, seeking Board approval of the proposed Water Storage Tank and an Order that the zoning, site plan review and all other Municipal Land Use Ordinances and Regulations promulgated under the auspices of the MLUL shall not apply to the Water Storage Tank.

30. N.J.S.A. 40:55D-19 provides in pertinent part as follows:

If a public utility, as defined in [N.J.S.A.] 48:2-13 . . . is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility or electric power generator has an interest, an appeal to the Board of Public Utilities of the State of New Jersey may be taken within 35 days after such action without appeal to the municipal governing body pursuant to section 8 of this act unless such public utility or electric power generator so chooses. . . . A hearing on the appeal of a public utility to the Board of Public Utilities shall be had on notice to the agency from which the appeal is taken and to all parties primarily concerned, all of whom shall be afforded an opportunity to be heard. ***If, after such hearing, the Board of Public Utilities shall find that the present or proposed use by the public utility or electric power generator of the land described in the petition is necessary for the service, convenience or welfare of the public,*** including, but not limited to, in the case of an electric power generator, a finding by the board that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and ***that no alternative site or sites are reasonably available to achieve an equivalent public benefit,*** the public utility or electric power generator may proceed in accordance with such decision of the Board of Public Utilities, any ordinance or regulation made under the authority of this act notwithstanding.

31. The Appellate Division first interpreted the "necessary for the service, convenience of welfare of the public" standard (as set forth in a predecessor statute) in In re Hackensack Water Co., 41 N.J. Super. 408 (App. Div. 1956). In Hackensack Water, the Appellate

Division concluded that the legislative intent was to empower the BPU to approve projects that are in the public interest, even when those projects conflict with local interests as “expressed through prohibiting provisions of a municipal zoning ordinance.” *Id.* at 419-20. The Appellate Division explained that while municipal ordinances are important to the public welfare, “such regulation is basically from the local aspect for a local public purpose,” and “the legislative intent is clear that such local regulation, however beneficent and important, is of secondary importance to the broader public interest involved in assuring adequate [] service to a much larger area.” *Id.* at 423.

32. In Petition of Monmouth Consol. Water Co., 47 N.J. 251 (1966, the New Jersey Supreme Court summarized the policies underlying the standard set forth in N.J.S.A. 40:55D-19 (again in the context of the predecessor statute) as follows:

In enacting this section the Legislature recognized that local municipal authorities are ill-equipped to comprehend adequately the needs of the actual and potential users of the utility’s services beyond as well as within their territorial limits. The lawmakers knew that if the zoning power of a municipality were paramount, it would probably be exercised with an eye toward the local situation and without consideration for the best interests of the consumers at large in other communities whose convenience and necessity require service. The exemption [from local zoning regulation] also signifies an awareness that if the local authorities were supreme the Board of Public Utility Commissioners could not compel a utility to provide adequate service if the zoning ordinance conflicted with the need for expansion or extension of its facilities within the municipality.

Id. at 258.

33. Soon after Hackensack Water, the New Jersey Supreme Court, in In re Public Service Electric & Gas Co., 35 N.J. 358 (1961) (“PSE&G”), announced a series of guiding principles for application of the standard set forth in N.J.S.A. 40:55D-19.¹ First, the Supreme

¹ The Appellate Division has held that while Hackensack Water and PSE&G analyzed a predecessor statute, the holdings and principles announced in those cases are applicable to N.J.S.A. 40:55D-19, which contains the same standards. In re Public Serv. Elec., 2013 N.J. Super. Unpub. LEXIS 304 at *25-26.

Court held that “[t]he statutory phrase, ‘for the service, convenience and welfare of the public’ refers *to the whole ‘public’ served by the utility* and not the limited local group benefited by the zoning ordinance.” PSE&G, 35 N.J. at 376-77 (emphasis added). Second, the Court held that “[t]he utility must show that the proposed use is reasonably, not absolutely or indispensably, necessary for public service, convenience and welfare at some location.” Id. at 377. Third, “[i]t is the ‘situation,’ *i.e.*, the particular site or location . . . which must be found ‘reasonably necessary,’ so the Board must consider the community zone plan and zoning ordinance, as well as the physical characteristics of the plot involved and the surrounding neighborhood, and the effect of the proposed use thereon.” Id. Fourth, “[a]lternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity.” Id. Fifth, “[t]he Board’s obligation is to weigh all interests and factors in the light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom,” and, “[i]f the balance is equal, the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local considerations.” Id.

34. In sum, to obtain an order from the Board exempting a project from local zoning ordinances and regulations, a public utility must demonstrate two things. **First**, the public utility must demonstrate that the proposed project is reasonably – but not absolutely or indispensably – necessary for the service, convenience or welfare of the entire public served by the public utility, taking into account the affected municipalities’ zone plans and zoning ordinances and the physical characteristics of the affected land and surrounding neighborhood (and the effect of the proposed use on that land and neighborhood). **Second**, the public utility must demonstrate that the site, method or route chosen for the proposed project is the best available, and thus its use is reasonably

necessary, based on consideration of alternative sites, methods and routes and their comparative advantages and disadvantages to all interests involved, including costs.

35. Here, NJAW has presented overwhelming evidence in this Petition satisfying both of these requirements.

VI. REASONABLE NECESSITY AND BEST AVAILABLE SITE

36. As demonstrated above and in the testimonies (particularly that of Bryan Slota and Dana Wright, the Water Storage Tank is required in order to maintain the safety and reliability of NJAW's water distribution system because it will allow NJAW to reliably, efficiently and safely achieve the water capacity and water pressure which serves customers in Bernardsville and surrounding municipalities. The design of the Water Storage Tank and, more importantly, the particular location of the Water Storage Tank is essential for safety and reliability of water utility service. The current water tank is insufficient, and the water available from MCMUA will be drastically reduced in January, 2022; thus, this Water Storage Tank is necessary.

37. Moreover, NJAW has presented significant evidence establishing that there are no reasonably available alternatives that could achieve an equivalent public benefit. As detailed above and in the evidence submitted in this filing, NJAW conducted a review of potentially appropriate properties with the same elevation as the proposed location in the surrounding area. That search yielded few, inferior reasonable alternative properties which were at the necessary elevation and which neither contained existing single-family homes nor were burdened by Green Acres restrictions; and which were not readily available to NJAW and likely not developable with the proposed Water Storage Tank without significant additional expense to NJAW. Finally most, if not all of the nearby properties in the Borough of Bernardsville are subject to the same zoning requirements as the proposed location and the nearby properties in the Borough of Mendham are located within a municipal zoning district that does not permit Public Utility facilities. Therefore,

setting aside the significant period of time that would be required for the planning and development of any inferior site that could be found for the proposed Water Storage Tank, there also is a strong likelihood that NJAW's application for the location of the proposed Water Storage Tank on any nearby properties would be denied by the reviewing Municipal Zoning Board. For all of those reason, NJAW concluded that there was no alternative property reasonably available for the location of the facility.

VII. OTHER APPROVALS

38. The Company has applied for and obtained NJDEP Construct and Operate Permit; Somerset County Planning Department Approvals for the Water Storage Tank and if this Petition is granted by the BPU, NJAW is ready to commence the Water Storage Tank construction in the very near term.

VIII. REQUEST FOR EXPEDITED RELIEF

39. NJAW designed the Water Storage Tank to provide the necessary water capacity and pressure to provide safe, adequate, and reliable service to its customers and residents of Bernardsville and surrounding municipalities and has lost almost two years since the submission of its Application to the Bernardsville Zoning Board in March of 2020 while the termination of the water purchase Agreement with MCMUA will expire in January of 2022. As a result, NJAW requests an expedited review of this Petition to avoid any further delays in the completion of the Water Storage Tank to allow it to become operational as soon as possible in order to remedy the supply shortfall and provide the necessary safety and reliability of supply that will be created forthwith by the dramatic reduction of MCMUA supply.

WHEREFORE, New Jersey American Water Company requests that the Board:

- (1) determine that the location and construction of the Water Storage Tank, as more specifically described herein, is reasonably necessary for the service, safety and welfare of the public;
- (2) determine that no alternative site or sites are reasonably available for the Water Storage Tank to achieve an equivalent public benefit;
- (3) Order that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the MLUL, including specifically the Zoning and Land Use Ordinances and all regulations promulgated thereto by the Borough of Bernardsville, shall have no application to the proposed Water Storage Tank, and authorize the Company to construct the Facility as set forth in the Petition and exhibits; and
- (4) grant such other and further relief as may be required.

Respectfully submitted,

ARCHER & GREINER, P.C.
Attorneys for Petitioner
New Jersey American Water Company, Inc.

A handwritten signature in blue ink, consisting of stylized initials 'JAB' enclosed within a large, loopy oval shape.

By: _____
James A. Boyd, Esq.

VERIFICATION


Donald C. Shields of full age, being duly sworn according to law, on his oath deposes and says:

1. I am Vice President and Director of Engineering for New Jersey American Water Company, the Petitioner in the foregoing Petition.
2. I have read the Petition, along with the Exhibits attached thereto, and the matters and things contained therein are true to the best of my knowledge and belief.

Donald C. Shields

Vice President and Director of Engineering
New Jersey American Water Co. Inc.

DocuSigned by:



68D53DF009DE458...

Donald C. Shields


Sworn and subscribed

before me this 3rd day

of January, 2022

James A. Boyd, Jr., Esq.
Attorney at Law, State of New Jersey
077172014

Certificate Of Completion

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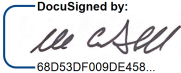

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