

March 7, 2022

Via Electronic Mail

The Honorable Judge Caliguire
State of New Jersey
Office of Administrative Law
Post office Box 049
Trenton, NJ 08625-0049

Re: Petitioner's Response to Motions to Intervene from Homeowners Mr. Savas and Ms. Martin Respectively

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 OAL Docket Number. PUC 00319-2022 S BPU Docket Number. WO22010004 Our File Number. NEW248.042

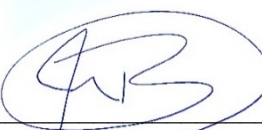
Dear Judge Caliguire:

Please accept this letter as the response of the Petitioner, New Jersey-American Water Company, Inc. ("NJAW" or "the Company") to the motions to intervene filed by two individual homeowners, Mr. Paul Savas and Ms. Karen Martin in this matter which were filed on February 17 (Savas) and on February 23 (Martin). This communication is being filed electronically with the Court as well as every person on the service list by electronic mail only. Paper copies will be provided only upon request. Please acknowledge receipt of this letter at your earliest convenience. Thank you for your consideration and attention to this matter.

Very truly yours,

Archer & Greiner
A Professional Corporation

By: _____


James A. Boyd, Jr., Esq.

Background

The Petitioner in this matter, NJAW, after a review of the regional water system, adopted a strategy involving three necessary components to facilitate conveyance, storage, and distribution of water for both domestic and fire service to the service territory and customers affected by the loss of water from the imminent reduction of Morris County Municipal Utilities Authority MCMUA bulk sale supply: (i) new underground pipelines for both increased flow capability resiliency and reliability 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, fire suppression and to provide gravity storage as required by NJDEP Regulations. The development of the Oak Place Booster Station and the Fenwick Water Storage Tank each required Approval by the Zoning Board of Adjustment of the Borough of Bernardsville.

NJAW's Applications to the Bernardsville Zoning Board were submitted in March and April of 2020 and did not reach an agenda for Zoning Board hearing until November 16, 2020. After exhaustive and repetitive testimony that took no fewer than ten (10) hearings the Bernardsville Zoning Board finally reached a decision on the Application for the Oak Place Booster Station on February 16, 2021 and for the Fenwick Water Storage Tank on October 4, 2021 with the memorializing Resolution not signed and released to NJAW until December 17, 2021.

In connection with the Bernardsville Zoning Board hearings for the Fenwick Tank, Movants' Counsel engaged in repetitive questioning of NJAW's witnesses; proffered speculative and unsupported arguments regarding the termination of the MCMUA source of supply; and requested that the Bernardsville Zoning Board find that their asserted "estate" type property interests should trump the interests of all the public water utility customers served within NJAW's local service area.

NJAW RESPONSE TO MOTIONS TO INTERVENE

Under N.J.A.C. 1:1-16.1(a), intervention is limited to parties that have “a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case” The standards that apply to consideration of a motion to intervene are found in N.J.A.C. 1:1-16.3(a), which requires consideration of “the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.” Both Moving parties fail to meet the standards for intervention.

The Petition was filed pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:2-23 after the Borough of Bernardsville Zoning Board finally released a signed Resolution memorializing its denial of the Petitioner’s application for the replacement of the existing Fenwick Water Storage Tank with a new, larger, Water Storage Tank which is necessary to maintain proper water pressure and capacity for fire suppression in the area and to provide adequate and reliable water capacity and pressure for NJAW’s customers during periods of higher demand. The Petition centers on the request that the Board of Public Utilities (“BPU”) assert its statutory right to determine that 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 new Fenwick Water Storage Tank as it is necessary to maintain and provide safe, adequate, and proper water utility service at the most reasonable rates to customers in the NJAW service territory.

The Petition and the Exhibits attached thereto, and also the Petitioner’s responses to BPU staff and Rate Counsel’s initial discovery requests provide the full procedural history and necessary information to support the Petitioner’s position, thus, this letter will focus on the

motions to intervene and the reasons that Your Honor should deny both Motions in total and not grant Intervenor or Participant status to Ms. Martin or Mr. Savas.

N.J.A.C. 1:1-16.3(a) requires applying the Movant's position against the four following considerations:

“the nature and extent of the movant's interest in the outcome of the case”

Ms. Martin and Mr. Savas are two individual Homeowners on properties in relatively near proximity of the existing water storage tank. Their primary interest in the outcome of the case is, quite simply, that they do not want a Water Storage Tank within view of their “estate” type property – in their opinion, the new water storage tank should be located in someone else's neighborhood. Movants would share in the positive impact from the new Water Storage Tank in the form of continued safety from adequate water capacity required for firefighting service.

In addition, because NJAW already owns the land on which the existing tank is located, as well as the pipes and infrastructure underneath that tank which has already been upgraded to handle the increased capacity, there are no reasonable alternative sites in the area that would not require the purchase of land at very significant cost, the construction of new infrastructure to reconfigure NJAW's system to deliver the water and increased costs associated with that infrastructure. Siting the Fenwick Water Storage Tank at an inferior alternate location, although there are no reasonable alternative sites, would cost significantly more money to purchase new property if the property owner is willing to sell and will require additional design engineering and litigation through the local approval process with no guarantee of approval. Higher capital costs ultimately result in higher rates for customers and the Company

endeavors to find the most cost-effective solutions to all capital projects, including this necessary project.

The Movants' primary intent and interest in intervening in this proceeding is to force the Fenwick Water Storage Tank to be located elsewhere, even if that means that all NJAW customers will be subjected to increased water utility bills and additional delay in designing, planning, and obtaining additional Municipal Approvals for a hypothetical alternative location where NJAW would likely face the very same "not in my back yard" opposition. For these reasons, the movants' interest in the outcome of this case is superficial at best.

“whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case”

As stated above, the only interest that the moving parties have in this case that is sufficiently different than the Borough of Bernardsville is that they live near the location of the tank and they do not want to see it from some vantage points on their properties. Given that this interest is described in the Bernardsville Zoning Board's Resolution and set forth in the Zoning Board hearing transcripts, Movants add nothing more than their previously documented objections and there is nothing in their Motions that indicate the possibility that Movants would add measurably and constructively to the scope of this case. The Court could note that two property owners near the location of the existing tank want the new tank to be located in someone else's neighborhood no matter how costly or inferior that location may be for the Petitioner. Any other issue regarding the appeal to the BPU following local denial will be represented by the Borough of Bernardsville and, as such, the Movants will not add measurably and constructively to the scope of this case. Again, the sole purpose of these

motions to intervene is to make every effort to keep this tank off of their street and they offer nothing measurably or constructively to the scope of this case other than to say “not in my backyard.”

“the prospect of confusion or undue delay arising from the movant's inclusion”

The hearing transcripts and record of the Zoning Board’s deliberations show that the moving parties have gone to great lengths to delay and advocate denial of the Approval of the proposed Fenwick Water Storage Tank over the many months of proceedings, negotiations, and modifications which were made in good faith by the Petitioner to attempt to address the concerns of these homeowners. Mr. Savas and Ms. Martin have hired attorneys to fight for denial at the municipal level including unsubstantiated assertions that NJAW did not provide ample or adequate testimony to explain or support the location and design of the Fenwick Water Storage Tank and unsupported inferences regarding NJAW’s negotiations with MCMUA regarding the terminated bulk water sale contract. Movants’ Counsel also engaged in duplicative and repetitive questioning of NJAW’s witnesses on these issues without presenting expert witnesses of their own, and these tactics have delayed votes and hearings in furtherance of their apparent goal to frustrate NJAW’s proposal and persuade the Bernardsville Zoning Board to deny the Application. There is little doubt that they will use the same tactics in Your Honor’s Court.

“and other appropriate matters”

This consideration is for Your Honor to identify and apply according to your discretion. The Petitioner asks the Court to consider “other appropriate matters” against the backdrop and scope of this particular Petition. Specifically, there is an urgent need to provide increased water storage capacity for reliability and gravity pressure for firefighting in order to account for the loss of water capacity upon the unavoidable termination of a water purchase agreement. The need for increased water storage capacity is not in question, the ideal location for a new water storage tank is on the site of the existing water storage tank which is why the existing tank is located at that location; and there are no reasonable alternatives to this tank site.

NJAW filed this petition as a last resort following denial by the local Zoning Board due in part to the opposition by Ms. Martin and Mr. Savas which undoubtedly delayed the Approval process following notification that the water purchase agreement would be terminated. Ultimately, these homeowners received the denial that they sought so they would not have to see a larger water tower on their street. NJAW looks forward to presenting the facts along with the Borough of Bernardsville, The Board of Public Utilities, and Rate Counsel for Your Honor to decide, under the law and code, whether to recommend that the BPU grant relief to build the necessary new Water Storage Tank on the site as proposed.

Conclusion

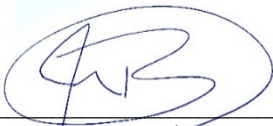
Ms. Martin and Mr. Savas have failed to meet the basic standards for intervention in this proceeding. Their interest in the outcome of this case is based solely on their mutual desire to deny this water storage tank, which is necessary for safety and proper service for all

NJAW customers in the area, due to it being located near their homes. This interest is not sufficiently different from the movants individually, nor will the movants' mutual interests add measurably and constructively to the scope of this case. The Borough of Bernardsville will represent the interests of the movants and all residents within the municipality and therefore the interests of these homeowners are not sufficiently different from that of the Borough of Bernardsville. Furthermore, granting intervention to Ms. Martin or Mr. Savas in this case will certainly cause undue delay on this time sensitive decision by this Court as they have directly delayed, seeking denial, at every stage of the local approval process. The Petition requested expedited review because there is a clear and present risk to public safety due to a lack of adequate capacity and pressure for fire suppression. While NJAW has taken every possible preventative step to mitigate this risk until the new water storage tank becomes operational, it is imperative that a decision on this case is reached as soon as reasonably possible.

For these reasons, the Petitioner requests that the Court denies these motions to intervene by Ms. Martin and Mr. Savas.

Respectfully submitted,

By: _____



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Attorneys for Petitioner
New Jersey American Water