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March 14, 2022

**VIA EMAIL ONLY**

Hon. Tricia Caliguire, ALJ  
Office of Administrative Law  
P.O. Box 049  
Trenton, New Jersey 08625-0049

**RE: In the Matter of the Petition of New Jersey American Water  
OAL Docket No.: PUC 00319-2022S  
BPU Docket No.: W022010004**

Dear Judge Caliguire:

This Firm, along with Robert Donaher, Esq., of Herold Law, serve as co-counsel to proposed intervenor-respondent Karen Martin. Please accept this letter in lieu of a formal reply brief in further support of Ms. Martin's motion to intervene.

First, we note that New Jersey American Water ("NJAW") asserts on the second page of its unnumbered letter brief that "Movants' Counsel engaged in repetitive questioning ... proffered speculative and unsupported arguments regarding the termination of the [Morris County Municipal Utilities Authority or] MCMUA source of supply ... and requested that the Bernardsville Zoning Board find that their asserted 'estate' type property interests should trump the interest of all public water utility customers."<sup>1</sup> Simply stated, for the purposes of this motion, NJAW has not presented record proof of any of these pejorative allegations to this Court. As was her right, Ms. Martin engaged counsel to present her case at the Board of Adjustment in a professional manner, consistent with governing land use practice and procedure throughout our State.

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<sup>1</sup> On the sixth page of its letter brief, Counsel for NJAW also incorrectly stated that Movants' Counsel did not "present[ ] expert witnesses of their own" at the Board of Adjustment proceedings. Of course, NJAW had the burden of proof and objectors were under no obligation to present their own witnesses at these proceedings. In any case, the objectors at the Board of Adjustment did in fact present an expert witness, a real estate appraiser who offered an opinion on the impact of the proposal on nearby property values. See Board of Adjustment Resolution dated December 17, 2021 (p. 12, par. f), attached as Exhibit A to Movant's February 23, 2021 Motion for Leave to Intervene ("Based upon the unrebutted testimony of a prominent real estate appraiser ..."). Thus, Counsel's statement in this regard was not an accurate representation.

Second, NJAW assumes in its arguments against intervention that there is an actual “need” for a new water tank (fourth page of letter). As set forth in Ms. Martin’s initial motion, the “need” for a new water tank and the circumstances surrounding the termination of NJAW’s previous water supply agreement with the MCMUA were hotly contested at the Board of Adjustment and will be ‘front and center’ in this litigation. Notably, no witness from the MCMUA testified at the Board of Adjustment hearings that the water previously being sold was no longer available from the MCMUA or that the prior agreement could not be renewed (albeit, perhaps, on modified terms and conditions less favorable to NJAW). Nor did NJAW present any documentary evidence to the Board of Adjustment on the ‘renewability’ issue either.

Rather, Ms. Martin’s counsel presented a letter dated May 11, 2018 (secured via an independent Open Public Records Act request) from the MCMUA to NJAW stating its reasons for not renewing the then-existing supply agreement. Exhibit A, attached hereto. The two main reasons provided by the MCMUA in that letter were the need for upgrading a pump station and the parties’ financial arrangement which was unfavorable to the MCMUA because it was losing money on the deal. The May 11, 2018 letter does not state that the MCMUA could not or would not renew the supply agreement and no definitive testimony was presented on this issue at the Board of Adjustment proceedings despite a year of hearings. Further, counsel for Ms. Martin researched years of MCMUA meeting minutes related to the extensive negotiations between NJAW and the MCMUA and presented the results to the Board of Adjustment, which the Board considered in its decision-making.

Ultimately, the Board of Adjustment accepted the arguments of the proposed intervenors, stating in its Resolution denying the application that the:

Board views the Applicant’s request as probably being predominately driven by reasons of a financial nature. Given the fact that the Applicant failed to provide adequate and clear information to the Board to make a firm decision, along with the Board’s understanding that **water seems to be available, the Board can only conclude that financial considerations relating to an extension agreement with the MCMUA were involved.** This falls far short of justifying such deviations for a conditional use in this zone.

Resolution, attached as Exhibit A to Motion to Intervene dated February 23, 2021 (p. 13, par. “i”) (emphasis added).

We submit that the information provided by the proposed intervenors added “measurably and constructively” to the Board of Adjustment proceedings and that this (and related information) will also add to this Court’s consideration of the matter.

If permitted to intervene in this matter, Ms. Martin intends to seek reasonable discovery on the issue of the ‘renewability’ of the MCMUA agreement and present any relevant evidence to the Court. We submit that her participation will add measurably and constructively to the scope of the

case concerning the renewability of the MCMUA agreement and other relevant issues. See N.J.A.C. 1:1-16.3(a).

Third, we do not believe it can be reasonably argued that Ms. Martin is not “substantially, specifically and directly affected” by the outcome of the case. Despite NJAW’s characterization (fifth page of its letter brief) of Ms. Martin’s interest as “superficial at best,” her interest in the outcome of this case is intense and the impact of the proposal on her is both “specific” and “direct.” She lives right across the street from a proposed water tank that will stand 83 feet in height (zoning permits a maximum height of 35 feet) and be situated on a parcel that is four tenths of an acre, only 4% of the required minimum 10 acre zoning in the relevant area of Bernardsville. It is self-evident, we suggest, that both her property value and use and enjoyment of her primary residence will be materially impacted by the proposed structure. Moreover, she has already spent tens of thousands of dollars in legal fees to participate in the Board of Adjustment proceedings. Ms. Martin has satisfied the “substantial and specific affect” standard to seek intervention pursuant to N.J.A.C. 1:1-16.1(a).

Fourth, the interest of a neighboring property owner in the dispute here is different than the interest of either the Borough or its Board of Adjustment (counsel for NJAW refers to these separate legal entities interchangeably, though only the Board of Adjustment is currently a party). The Board of Adjustment is a public body with appointed members serving a community-wide interest pursuant to the Municipal Land Use Law, with potential budgetary constraints and a commitment to the case that is different from an adjacent property owner with such a direct personal and financial interest. For example, consistent with its reasonable ‘public obligations,’ the Board of Adjustment could set a specific budget to litigate this case, and make strategic decisions concerning discovery, expert witnesses, trial preparation and settlement with regard to its overall obligations to the community. Ms. Martin may not agree with these decisions. Without her intervention and direct participation in this matter, we submit that her interests will not be fully represented.

Finally, we suggest that in this matter the “prospect of confusion or undue delay arising from the movant’s inclusion,” N.J.A.C. 1:1-16.3(a), is primarily an issue of case management rather than intervention. Counsel for the Board of Adjustment, putative intervenor Savas, and I have held extensive discussions about case coordination, allocation of resources, and avoidance of repetitious activity. In fact, I can represent to the Court that a joint defense agreement has been drafted and the parties intend to enter into it if intervention is permitted. Reasonable and responsible case management by the Court and coordination by respondents can address the potential for either “confusion” or “undue delay.” We trust that professional communication and coordination between seasoned adversaries across the table will do the same.

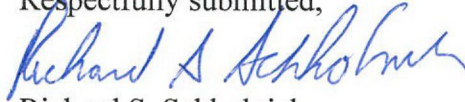
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For these reasons and those set forth in the initial moving papers, prospective intervenor Karen Martin respectfully requests that her motion to intervene be granted.

Respectfully submitted,

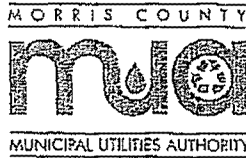


Richard S. Schkolnick

S/lp

Enclosures

cc: Service List (via email only)  
Ms. Karen Martin (via email only)



May 11, 2018

Via Certified Mail Return Receipt Requested and Electronic Mail  
(tom.shroba@amwater.com)

New Jersey American Water  
167 J. F. Kennedy Parkway  
Short Hills, NJ 07078

New Jersey American Water Company, Inc.  
1025 Laurel Oak Road  
Voorhees, New Jersey 08403  
Attn.: Corporate Secretary

Attn: Thomas Shroba, P.E.  
Vice President - Operations

Re: Borough of Mendham, County of Morris, New Jersey  
Conditional Notice of Intent to Terminate Water Supply Agreement

Dear Mr. Shroba:

As you are aware, New Jersey American Water Company (NJAWC) and Morris County Municipal Utilities Authority (MCMUA) have met several times over the past three and a half years, beginning on December 18, 2015, and most recently July 10, 2017. The purpose of these meetings was to review and discuss long-term plans for the current water supply agreement which serves the Mendham Borough portion of your distribution system.

As a reminder, the existing water supply agreement was executed on December 29, 2011, with an initial term of ten (10) years. The initial term will automatically extend for an additional five (5) years if neither party gives notice of termination within two (2) years of the end of the initial term.

Throughout the course of the recent meetings, several options were discussed for the long-term water supply to NJAWC, as well as discussions on current issues which render the existing operation inefficient and economically undesirable for MCMUA.

The existing MCMUA booster pump station, located to the west of Woodland Road directly in front of the SMCMUA Clyde Potts Reservoir and Water Treatment Facility, was designed as a temporary solution and does not provide adequate redundancy nor operating capacity to meet the minimum purchase obligation. This booster pump station is a critical facility identified as part of MCMUA's Asset Management plan due to its single pump configurations located in a below ground vault without standby power. The booster pump suction is SMCMUA's eighteen-inch (18") main, with discharge through a twelve-inch (12") transmission main owned and operated by MCMUA along Cold Hill Road. The below grade structure prohibits effective maintenance. In addition, MCMUA has documented that whenever the SMCMUA Clyde Potts Water Treatment Facility enters a backwash cycle and reduces flow or when the plant is not operating at capacity, the MCMUA pump is unable to overcome the reduction in suction head which results in an inability to move the 0.6 mgd minimum purchase obligation flow rate with SMCMUA.

214A Center Grove Road, Randolph, NJ 07869  
Phone: (973) 255-8383 · Fax: (973) 255-8397 · E-mail: info@mcmua.com · Website: www.mcmua.com

Morris County's Environmental Resource

Exh A

Pursuant to the Groundwater Rule, SMCMUA requires increased disinfection contact time (CT) prior to the first customer - the MCMUA booster pump station. There are several ways in which this additional CT can be achieved, such as additional baffles in the clearwell, additional mixing equipment, or the installation of a large diameter stilling pipe at the discharge of the facility, all of which are very costly options.

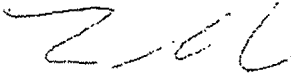
Another concern is water potential impacts associated with blending MCMUA's ground water with SMCMUA's surface water. Whenever a change is made in the source of the water, there are potential water quality impacts to customers. The New Jersey Department of Environmental Protection (NJDEP) is continuously modifying regulations, adjusting reporting limits, and implementing requirements. Although there have been no reportable water quality events to-date, due to NJDEP's ever changing standards, long-term impacts continue to be evaluated.

In addition, the 2017 Water Rate for the purchase of water from SMCMUA Clyde Potts water was \$2,932.88/MG and the 2017 water rate for sale of water from MCMUA to NJAW was \$2,692.86/MG as established in the Water Supply Contracts and all previous water rate increases. This results in a financial loss of \$240.02/MG sold to NJAW. For the year 2017, the total loss was calculated as \$54,109.39 for total water sold. These losses do not account for periods in which operating circumstances prevented the pump from delivering the required water to NJAW.

In consideration of the above factors, MCMUA respectfully advises of its intent to terminate the water supply agreement between New Jersey American Water Company, Inc. and Morris County Municipal Utilities Authority upon contractual expiration on the 5<sup>th</sup> day of January 2022, conditioned upon an amendment to the Water Supply Agreement by and between MCMUA and SMCMUA, dated September 10, 2002 (as amended on June 1, 2012) that would authorize the expiration of all obligations set forth in Article III of said Water Supply Agreement on January 6, 2022. Furthermore, the existing infrastructure utilized to convey the water to your system, such as the 12" Ductile Iron Pipe transmission main located in Cold Hill Road and the existing Booster Station is currently owned, operated, and maintained by MCMUA. We are prepared to negotiate the sale of this critical infrastructure as part of the termination of this agreement, as well as maintain an emergency system interconnection with NJAW.

Should you have any questions, please contact our office.

Very truly yours,



Larry Gindoff  
Executive Director

Cc: Andrew S. Holt, PE, PP, CME, MCMUA Consulting Engineer (aholt.suburbanconsulting.com)  
Shari Shapiro, Esq., Cozen O'Connor  
Vincent Monaco, PE, NJAW Manager Asset Planning  
Frank Marascia, NJAW Production Manager