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September 26, 2022

VIA EMAIL

Hon. Tricia Caliguire
State of New Jersey
Office of Administrative Law
P.O. Box 049
Trenton, NJ 09625-0049

**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:

On behalf of Intervenor Paul Savas (“Intervenor”), please accept this response to the letter filed by Petitioner, New Jersey American Water Company, Inc. (“NJAW” or “Petitioner”).

In its letter opposing Intervenor’s motion seeking leave to take depositions, Petitioner writes at length objecting to our use of the term “informal” motion in our letter motion dated September 9, 2022. See NJAW letter dated September 19, 2022 (“NJAW Answer”), p. 1. The effort by Petitioner to “blow smoke” about the legitimacy of our motion should be disregarded. First, Your Honor’s Prehearing Order dated April 8, 2022 states that discovery concerns should be brought to you informally. Further, N.J.A.C. 1:1-12.1(a)(2) provides that no technical forms of motion are required. Nonetheless, in order to alleviate any alleged “confusion,” please accept the letter filed on September 9, 2022 as a “letter” motion.

Petitioner is correct that Intervenor did not file a certification of service on September 9, 2022. NJAW Answer, pp. 1-2. That was an oversight on the part of the individual who filed the motion, which was corrected as of September 20, 2022 when a certification of service was filed to that effect. However, as can be readily ascertained by reviewing the covering email to the motion papers, all parties were served with same via email (See Exhibit A.).

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In NJAW's Answer, Mr. Boyd stated that it appeared that Laura Cummings, Executive Director of the Southeast Morris Municipal Utilities Authority ("SMCMUA"), was not served with a copy of the papers and had not been given the opportunity to oppose the motion. Further, he intimates that Intervenor left it to Petitioner to oppose the motion on behalf of Ms. Cummings. NJAW Answer, p. 2. Neither contention is correct.

Neither Ms. Cummings nor SMCMUA is a party to this case. Therefore, there was no basis for Intervenor to serve either with the motion papers seeking leave to take Ms. Cummings' deposition. Instead, Intervenor advised counsel for SMCMUA by telephone that it would be filing such a motion.

The New Jersey Administrative Code provides that subpoenas to compel the attendance of a person to testify at a deposition may be issued by a judge pursuant to N.J.A.C. 1:1-10.2(c). See N.J.A.C. 1:1-11.1. Thereafter, upon motion of the subpoenaed deponent, a judge may quash or modify a subpoena. N.J.A.C. 1:1-11.3. Thus, it is up to the non-party witness served with a subpoena to make a motion seeking to quash or modify the subpoena, not up to the party who seeks permission to depose the non-party witness to serve that witness with the motion papers seeking the right to hold a deposition.

Intervenor is seeking to depose Ms. Cummings since documents provided by Petitioner in response to discovery indicate that Ms. Cummings has personal knowledge of the facts related to the extent of negotiations, if any, between NJAW and SMCMUA for water to replace supply discontinued by the Morris County Municipal Utilities Authority ("MCMUA"). See Exhibit B. Petitioner is claiming in its direct testimony that there is no viable solution other than the new Fenwick Tank for making up for the water previously supplied by MCMUA. Ms. Cummings' testimony could show otherwise.

Other documents indicate that Mr. Monaco, NJAW's now-retired "lead" on this matter and the other witness that Intervenor seeks to depose, also has knowledge related to negotiations with SMCMUA regarding the viability of purchasing replacement water from SMCMUA. See Exhibit C. Petitioner asserts that Mr. Monaco was cross-examined on the record by Intervenor's counsel, so there is no need to seek further testimony from Mr. Monaco. Petitioner also states that the transcripts of Mr. Monaco's testimony will be entered into the record of this case. NJAW Answer, p. 3. However, Intervenor did not have copies of Exhibits B and C during those hearings. In addition, Intervenor did not have in its possession during the Board of Adjustment proceeding a memorandum authored by Mr. Monaco, since produced by Petitioner in this matter, that characterized the purchase of water directly from SMCMUA as a feasible solution. Further, Intervenor had no knowledge when the Board of Adjustment hearings were taking place that SMCMUA and NJAW had been discussing a direct purchase and sale of water to replace the water from MCMUA, as well as negotiating to replace and relocate a pump station located directly outside the Clyde Potts Reservoir that would solve other technical issues that were an asserted impediment to continued use by NJAW of water from this Reservoir. As a result, no questions were posed to Mr. Monaco about whether NJAW pursued negotiations for replacement

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water from SMCMUA, water that might have offered a less expensive solution than the multi million dollar Fenwick Tank that is at issue in this proceeding.

For all of the above reasons, Intervenor respectfully requests that Your Honor grant Intervenor's motion to take the depositions of Ms. Cummings and Mr. Monaco.

Very truly yours,

/s/ Phyllis J. Kessler

Phyllis J. Kessler

PJK

CERTIFICATION

I, David B. Amerikaner, of full age, hereby certify as follows:

1. I spoke with outside counsel for the Southeast Morris County Municipal Utilities Authority on August 3, 2022, and advised counsel that if Intervenor's request for an informal interview with Laura Cummings, executive director of the SMCMUA, was denied, that Intervenor would file a motion for leave to take Ms. Cummings' deposition in the matter captioned *In the Matter of the Petition of New Jersey American Water*, OAL Docket No. PUC 00319-2022S, BPU Docket No. WO22010004.

I hereby certify that the foregoing statements by me are true. I am aware that if any of the foregoing is willfully false, I am subject to punishment.

Dated: Sept. 26, 2022

/s/ David B. Amerikaner
David B. Amerikaner

CERTIFICATION OF SERVICE

I, Carol A. Jacoby, certify that I am a paralegal at the law firm of Duane Morris, LLP, and on September 26, 2022, I caused copies of Paul Savas' Reply regarding the Motion to Take Depositions to be served via email upon each of the parties named on the service list attached to this filing. The above statements made by me are true. I am aware that if any statement made by me is willfully false, I am subject to punishment.

/s/ Carol A. Jacoby
Carol A. Jacoby

Dated: September 26, 2022

**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
BPU DOCKET NO: W022010004
OAL DOCKET # PUC 00319-2022 S**

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