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VIA ELECTRONIC MAIL

Sherri Golden, Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave., 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: Petitioner's Reply to Intervenor's Exceptions to Initial Decision
In the Matter of the Petition of New Jersey American Water Company, Inc.
For a Determination Concerning the Fenwick Water Tank, Pursuant to
N.J.S.A. 40:55D-19 - OAL Docket No. PUC 00319-22
BPU Docket No. WO22010004**

Dear Secretary Golden:

On behalf of the Petitioner, New Jersey American Water Company, Inc., and pursuant to N.J.A.C. 1:1-18.4(d), please accept this reply to the exceptions filed by Intervenor Paul Savas and Participant Karin Martin to the Initial Decision ("I.D.") in the above-referenced matter.

The majority of the Intervenor's exceptions claim that Judge Caliguire erred in several areas of her initial decision by disregarding relevant case law and improperly interpreting the law as it applies to the facts and record in this matter.

The Petitioner firmly disagrees and objects to every claim made by the Intervenor that Judge Caliguire erred in her application of law and jurisprudence in her decision. Although, this reply is not intended to address any claims directed at the Judge and her I.D., Petitioner respectfully notes the following.

BURDEN OF PROOF UNDER N.J.S.A. 40:55D-19

First, the I.D. is clear that the Judge **did not** improperly shift the burden of proof to Intervenor. Judge Caliguire correctly noted at Pages 41-46 of the I.D., that **Petitioner** had the burden of proof with respect to its Petition under N.J.S.A. 40:55D-19. However, the I.D. also concluded that Petitioner had met this burden. Once Judge Caliguire had made this finding, She correctly applied the burden shifting provisions established by In re Hackensack Water Co., 41 N.J. Super. 408 (App. Div. 1956). The I.D. cites that case as follows:

We do not think it obligatory on the utility to set up a lot of straw men and then knock them down. As part of its case in establishing basic necessity for the improvement itself apart from the location it should, however, show that the means or method proposed to meet the public need is reasonable and desirable... ***Beyond this, the burden of demonstrating a feasible alternative method ought to devolve on the objectors, as should a showing of alternative sites beyond those brought forward by the applicant.***

I.D. at 48-9 (emphasis supplied).

The Intervenor's exceptions also include Incorrect or misleading claims directed toward the Petitioner that warrant a more specific reply.

PETITIONER CONSIDERED AND MITIGATED POSSIBLE IMPACT ON COMMUNITY

The Intervenor claims that the Petitioner failed to consider the impact that replacing the existing water tank would have on the community. This is simply not true.

At its core, replacing an existing water tank with a larger water tank could create a visual impact. The Petitioner went to great lengths to work with Bernardsville and the community to develop a plan to mitigate any material visual impact. This included identifying the best landscaping and tree planting plan and proposing alternatives to the local Zoning Board of Adjustment, discussions over the color of paint, and other careful considerations. The Petitioner also presented a plan to the Intervenor which would have moved the tank further uphill so that a new tank design could be built to further mitigate visual impact while still complying with the regulatory minimum water elevation. This plan would require the intervenor to essentially trade land with the Petitioner in order to reduce or eliminate any visual impact. The Intervenor flatly rejected this proposal. The Intervenor chose not to pursue this option stating in writing that he was made upset by the proposal and is not inclined to cooperate with any plan to increase the tank size.

It also important to keep in mind the larger "community" of approximately 3,000 customers in the area who will rely on this tank for fire suppression and reliable water service. At the heart of Petitioner's proposal to replace the water tank, is the improvement and maintenance of water supply to that larger community. Intervenor's use of the word "community" appears to be limited to Mr. Savas and Ms. Martin, the only two local residents who objected to Petitioner's plans to replace the existing water storage tank.

The Petitioner considered potential impacts associated with replacing the water tank both on the community at large and the Intervenor and Participant and worked to identify and mitigate potential impacts on those two homeowners who live near the existing water storage tank.

MODELING AND ACCESS TO DATA WAS PROVIDED

The Intervenor's claims, particularly in Exceptions 1 and 2, regarding their expert witness being denied access to modeling data are clearly incorrect. The Petitioner, as a public water utility, has a duty to protect their modeling system from being used to plan an attack on the water supply. Many of these security protocols are required by the New Jersey Department of Homeland Security to meet State and Federal Regulations. For this reason, NJAW does not "loan out" its proprietary and sensitive modeling system for people to tinker with at home. However, the Petitioner works with expert witnesses to create the parameters and inputs that expert witness requests and then hosts the expert witness at their facility to review and interact with the models as requested.

Ms. Diaz, the Intervenor's expert witness herself visited the Petitioner's facility and testified that NJAW produced everything that she requested, as she requested it. Ms. Diaz also testified that she never asked to run additional or alternative models and she was never denied access to anything that she requested. Intervenor could well have requesting or conducted additional or independent modelling to prove its case but declined to do so.

The remainder of the references to modeling intertwine with the Intervenor's claim that Judge Caliguire erred on interpretation of the law and facts. The Petitioner disagrees with the Intervenor's claims.

COSTS WERE CONSIDERED

The Intervenor claims that the Petitioner failed to consider the costs, or the lowest cost alternative. Replacing a water tank that has outlived its useful life with a new tank on the same site on which a water tank has stood for decades, and which NJAW owns, and which has the infrastructure in place to allow the new tank to be placed into service as soon as it is complete is clearly a lower cost alternative than purchasing new expensive land and installing new infrastructure to connect to a new water tank at a new location. Petitioner would also almost certainly have encountered the same difficulties in obtaining the necessary local approvals for any such location. The Petitioner presented significant evidence regarding the cost of relocating the tank, in procuring a new location, and the substantial "per mile" cost of installing water mains in addition to the other cost considerations.

ALTERNATIVE SITES AND SOURCES WERE CONSIDERED AND EXPLORED

The Intervenor has consistently raised the theory that the Petitioner could have somehow compelled or coerced the Morris County Municipal Utilities Authority to continue the purchased water contract against its will or identify a new source of water to purchase 1MGD of water which Intervenor asserts would have negated the need to construct a replacement water tank. Intervenor presented no direct evidence whatsoever to support this theory.

Exception 7 in the Intervenor's letter brief also asserts that NJAW could have purchased water directly from the South East Morris County Utility Authority (SMCMUA) and includes the following which is misleading if not patently false:

“Most importantly, Petitioner identified a feasible alternative method – purchasing water directly from the Southeast Morris County Municipal Utilities Authority to offset the loss of supply from the Morris County Municipal Utilities Authority – but never pursued this alternative, which would have avoided the massive impact to the community in the vicinity of the Fenwick Tank.” (emphasis added)

It is true that NJAW responded to the notice of contract termination by looking into alternatives to replace the loss of water supply from the MCMUA. One early option was to explore the possibility of purchasing water from other sources including the SMCMUA directly. Petitioner ultimately determined that, due to concerns with SMCMUA infrastructure and water treatment concerns, that the purchase of that supply was not adequate as a long-term replacement of the lost MCMUA supply. In fact, Petitioner’s analysis led to the conclusion that SMCMUA could not supply the replacement water as much of the water that had previously been provided by MCMUA had come from sources other than the SMCMUA. Intervenor had adequate opportunity to provide testimony or other direct evidence that the lost supply could be replaced from SMCMUA sources but Intervenor failed to do so, relying on speculation and inference as its evidence instead.

All of the alternatives identified during the hearing before the Office of Administrative Law were considered and explored, and ultimately there were no adequate available sources of water available to adequately supply the NJAW system with 1MGD of water. For the Intervenor to allege that NJAW could replace the MCMUA supply with an alternative supply at a sufficient elevation and close enough to feed the existing tank and provide sufficient volume for adequate service and fire suppression is disingenuous and based upon mere speculation.

Throughout this proceeding, Petitioner has maintained, and continues to maintain, that the proposed replacement water tank is a necessary water utility infrastructure project. That project has been made necessary due to a county water authority terminating a water contract that had enabled NJAW to purchase 1MGD from a source at a higher elevation to gravity feed the existing tank. Intervenor has produced no evidence to support the theory that NJAW could have continued the contract after the MCMUA exercised its right to unilaterally terminate the water purchase agreement according to the terms of the agreement itself. Nor is there evidence that NJAW “had numerous alternatives that [NJAW] could have pursued that would have reduced impacts on the surrounding community.” Intervenor’s Exception 6. There was no reasonable alternative to replace the MCMUA 1MGD with any other source that would negate the need to replace the existing Fenwick Water Storage Tank.

Petitioner’s chosen alternative, the Fenwick Tank replacement provides the significant benefits of adequate storage for peak demand; adequate storage and pressure for firefighting; and gravity storage in compliance with regulatory requirements. No other alternative provided those same benefits and no alternative was reasonably available without significant hurdles in terms of local opposition and additional costs that would ultimately be passed along to NJAW’s customers.

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The record shows all due diligence on behalf of the Petitioner to respond to the loss of water supply with the most effective plan that will allow NJAW to continue to provide safe and reliable water service with the least possible negative impact on rate payers and the community.

CONCLUSION

Intervenor's exceptions contain numerous other objectionable statements and unsubstantiated claims. However, we submit this reply to the particular claims discussed herein, and directly aimed at the Petitioner to supplement the general objection and disagreement with all of the Intervenor's exceptions.

Respectfully submitted
to be filed for Board Consideration

A handwritten signature in blue ink, consisting of stylized initials 'JAB' enclosed within a circular scribble.

JAMES A. BOYD
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