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September 19, 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 Intervenor’s Letter Requesting Depositions**

**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:

On behalf of the Petitioner, New Jersey American Water Company, Inc. (“NJAW” or “the Petitioner”), please accept this objection to Intervenor Paul Savas’ letter and certification “as an informal motion” to depose Vincent Monaco, a former employee of NJAW, and Laura Cummings, Executive Director of the Southeast Morris County Municipal Utilities Authority (“SMCMUA”).

As described in detail below, the Petitioner’s opposition is both procedural and substantive in nature. First, it is unclear if the Intervenor’s letter and certification in tandem create a proper motion under the rules. The Intervenor, in his letter and certification, refer to the correspondence with this Court and to the Petitioner as an “informal motion” and, as such, there

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remains ambiguity as to whether the letter and certification are intended to be a formal motion under the rules or otherwise a different “informal request” to initiate a debate or informal consent as the intervenor has recently sought from the Petitioner and from the SMCMUA. The Petitioner has clearly stated that it will not consent to a deposition and it appears from the Intervenor’s exhibit regarding an informal request for deposition of Ms. Cummings that counsel for SMCMUA has also declined to consent to a deposition.

Furthermore, the rules require “proof of service” and it’s unclear whether Ms. Cummings has been served this motion to depose her and has been afforded the opportunity to oppose this effort by the Intervenor (if it is, in fact, a proper motion under the rules). Neither Ms. Cummings or any of her colleagues at the SMCMUA were copied on the email submission which included the Intervenor’s letter and certification. However, based on the Intervenor’s previous efforts to serve subpoenas for discovery directly to SMCMUA, which is not permitted by the rules, without notifying or copying parties to this case on the correspondence, there remains the possibility that Ms. Cummings was served notice; however, the Petitioner is uncomfortable with the present situation in which it is not appropriate for the Petitioner to oppose this action on behalf of Ms. Cummings or otherwise remain silent on this issue at the risk of appearing to be neutral or otherwise consenting to the deposition of Ms. Cummings. To tread lightly here, we ask Your Honor to consider that the Petitioner opposes depositions to both people identified in the Intervenor’s letter and certification to the extent permissible under the rules of this Court. This opposition will focus on Mr. Monaco and the procedural issues.

As for the substantive opposition to the prospect of Vincent Monaco being ordered to be deposed, also described in detail below, there is no “specific need” for a deposition of Vince

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Monaco and the information sought can be “obtained in other ways”. Indeed, Mr. Monaco was cross-examined on the record by counsel for Intervenor Savas and by counsel for Participant Martin on no less than two occasions for as long as counsel required to ask every question that they had for Mr. Monaco. Transcripts of these cross examinations will be submitted to the Court upon request or otherwise will be entered into the record on this docket at a later date. There is no need for a third session for questions on the same subject matter to necessitate an order from this Court to require a retired employee who has already sat through hours of questions from counsel in a formal setting on the record. In addition to the formal and live cross examination, the Petitioner has produced emails, correspondence, and document that Mr. Monaco drafted or received on the subject matter of this petition since 2015 in response to the Intervenor’s Onerous discovery quests, and despite the Petitioner’s objections.

For these reasons, and as described in detail below, the Petitioner requests that, if Your Honor considers the ‘informal motion’ letter and certification submission from the Intervenor as a proper motion under the rules, that this motion be denied.

Very truly yours,



JAMES A. BOYD

**Background**

Your Honor's Order which was issued on August 12, 2022 noted the Petitioner's intention to oppose a motion for deposition and set a deadline of September 9, 2022 for "motion(s), if any, to conduct depositions" and this Order also cited compliance with N.J.A.C. 1:1-12.2 in submitting such a motion and also reference to N.J.A.C. 1:1-10.2(c) which applies to discovery and includes provisions that govern the proper consideration of motions for discovery related motions.

On Friday, September 9, 2022, the Intervenor submitted two documents to the Court and copied counsel for Parties in this matter. One document is a letter that asks the Court to "accept the within the letter as an informal motion, made pursuant to N.J.A.C. 1:1-10.2 and, by reference, N.J.A.C. 1:1-10.1... to take two depositions, one of Laura Cummings, Executive Director of the Southeast Morris County Municipal Utilities Authority ("SMCMUA") and one of Vincent Monaco, a former employee of New Jersey American Water Company (NJAW)". See Intervenor's "Letter to Judge Caliguire in support of motion to take depositions 9.6.22"; Page 1 (emphasis added). The second document is titled as, "Certification in Support of Informal Motion to Take Depositions".

The Petitioner finds that these documents, taken together, do not meet the standards for filing a motion under the rules, and the Petitioner questions the scope of a proper response to a letter and certification in support of an "informal motion". Nonetheless, and in the furtherance of Your Honor's disposition, and the Petitioner's interest on behalf of its customers, to come to a resolution on this matter as soon as reasonably possible, the Petitioner submits this opposition

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within ten (10) days as required by the rules for a formal and proper motion while reserving it's position that the Intervenor's self-described, "informal motion," letter and certification do not satisfy the rules according to Your Honor's Standing Order.

**The Intervenor's Submission does not satisfy the requirements for a motion**

The requirements that govern motions for depositions, as cited by the standing order by this Court and also explicitly acknowledged by the Intervenor in their informal motion letter, are found at N.J.A.C 1:1-12.2 "Motions in writing; time limits" and also at N.J.A.C. 1:1-10.2 "Discovery by notice or motion; depositions; physical and mental examinations". While the Petitioner recognizes that a Motion, "does not have to be in any special form, and a letter will suffice." (N.J.A.C. 1:1-12.1 et. Seq.) the particular language used by the Intervenor classifying this action as an "informal motion" is confusing as to the intent. There is no intention to split hairs here and argue over a technicality but the intentional and repeated classification of the letter and certification as "informal" by Counsel for the Intervenor creates some questions as to the Intervenor's purpose and expected response from this Court and responding parties.

A motion for deposition or discovery under N.J.A.C 1:1-12.2(a) requires, "Proof of service shall be filed with all moving and responsive papers." There is no indication that either Ms. Cummings or Counsel for SMCMUA has been served notice of this particular submission. Paragraph 5 of the Intervenor's certification identifies "Exhibit G" which only shows recent communication through August 31, 2022 of efforts by the Intervenor to schedule an "informal interview" with counsel for the SMCMUA to which David Ruitenber, Counsel for SMCMUA responded, "We discussed what if any benefit there would be to an informal interview and

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concluded that there would be none... Therefore, the documents previously produced will need to suffice.” See Exhibit G of Intervener’s “letter in support of informal motion to depose”.

To the Petitioner’s knowledge, the requirement for Proof of Service under N.J.A.C 1:1-12.2(a) has not been met, Ms. Cummings has not been afforded due process to oppose this “motion” for deposition, and Counsel for the SMCMUA has clearly articulated its position that his client does not consent to a voluntary “informal” deposition.

**There is no Justifiable Reason to Depose Mr. Monaco**

Even if Your Honor decides that the submission by the Intervenor in support of an informal motion for deposition is valid and was properly submitted Motion under the rules, there is no reason or justification for Mr. Monaco to be deposed. Under N.J.A.C. 1:1-10.1(c):

“In considering a discovery motion, the judge shall weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness. Except where so proceeding would be unduly prejudicial to the party seeking discovery, discovery shall be ordered on terms least burdensome to the party from whom discovery is sought.” N.J.A.C. 1:1-10.1(c) (emphasis added)

N.J.A.C. 1:1-10.2, which specifically references depositions cites back to the above provision as follows:

“In deciding any such motion, the judge shall consider the policy governing discovery as stated in 1:1-10.1 and shall weigh the specific need for the deposition or examination; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition or examination; undue hardship; and matters of expense, privilege, trade secret or oppressiveness.” N.J.A.C. 1:10.2(c)

Mr. Monaco was subject to cross examination by Counsel for the Intervenor and by the Participant, both of whom engaged in a joint opposition to the necessary water utility infrastructure project at the municipal proceeding that is central to this petition, on at least two occasions. Mr.

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Monaco answered every question in public and on the record on both of these opportunities for the Intervenor to question him on the same subject matter that the Intervenor seeks a third opportunity to question Mr. Monaco by way of a formal deposition under order from this Court.

In addition, the Petitioner has provided a full response to Intervenor's discovery requests for documents and emails which Mr. Monaco drafted or received over more than the past five years on the subject matter identified in the Intervenor's informal letter motion and in response to the Intervenor's discovery requests. To this extent, all information sought by the Petitioner through a deposition is available through this record. Any and every "specific need for information" has been addressed in prior proceedings on exactly the same subject matter, including, but not limited to the water purchase contracts with MCMUA and SMCMUA and to show the good faith efforts to find a reasonable alternative site for the required upgrade in water storage capacity and pressure. There is nothing more to provide here. Mr. Monaco is currently retired and, even if he was not retired, it would be irrelevant to the Petitioner's opposition to this letter from the Intervenor. Depositions in this matter will open the door to undue delay without benefit to the proceeding.

To be clear, and notwithstanding the procedural issues mentioned above, the Intervenor has not proved a specific need to compel a deposition through an Order from this Court on a person who has already been formally questioned by the Intervenor on multiple occasions and has already produced to the Intervenor, through discovery, the emails and documents that exist in the universe of subject matter that the Intervenor seeks to obtain through deposition of Mr. Monaco.

### **Conclusion**

The Petitioner respectfully requests that Your Honor denies this informal request for deposition for the reasons stated herein.