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*Via Hand Delivery*

Linda R. Feinberg, A.J.S.C.  
Mercer County Courthouse  
175 South Broad Street  
Trenton NJ 08650-0068

**RE: In Re Petition for Referendum on City of Trenton Ordinance 09-02**  
**Docket No: MER-L-548-09**

Dear Judge Feinberg:

## PRELIMINARY STATEMENT

On March 16, 2009, only 12 days after the Complaint was filed and the Order to Show Cause issued, the Court rendered a final judgment making findings of fact, choosing to rely on facts as represented to Plaintiff, City of Trenton's ("City") and Intervenor, NJ-American Water Company's ("NJ-American") counsel over facts as certified to the Court by the City's former Business Administrator, William Guhl, rejecting, with due respect, his version of the facts simply because he lacked engineering credentials.

In the aftermath of the issuance of this final judgment, the layperson Petitioners were made aware of a document, appended hereto as part of this motion, supplied by the City and NJ-American as Joint Petitioners before the Board of Public Utilities, but not supplied to the Court

in the March 2009 proceedings. They were made aware that JP-13, included in the City's submission to the BPU, contained clear statements by engineers engaged by the City which squarely contradict the findings that the City asked this Court to make.

The report in question is so clearly written that the Court should have no trouble interpreting it and seeing firsthand the representations made to it by the City. However, to avoid any obstacle to its meaning, Petitioners have engaged an independent engineer with extensive municipal water utility experience to verify their understanding of its content as it pertains to the two crucial findings made by this Court on March 16, 2009:

A. That the Trenton Water Utility System is now and always was two separate systems, one the OWUS the other the IWUS, and

B. That the facilities (located in the OWUS) do not provide water service to any customers in the City of Trenton, let alone 5% or more of the City population.

This motion seeks reconsideration of the findings and conclusions made on March 16, 2009 and requests that the Court permit a rehearing on the key issues so that the interests of the public are fully protected against what Petitioners (including the legions of signers of the protest petitions) fear to be a fiscal blunder of unprecedented proportions.

The motion seeks also to have the Court reconsider its legal conclusion that the in drafting the Municipal Utilities Law ("MUL") (which mandates public participation by requiring a pre-sale referendum upon all but the most insignificant sales) the New Jersey Legislature intended, implicitly to prohibit public participation by protest referendum against the sale of a

system for which mandatory public participation is excused. The court is asked to re-consider the lack of any legislative expression in the MUL other than a positive preference for public participation in the sale of water utility systems, against the 2007 opinion of the Supreme Court in In re Ordinance 04-75, 192 N.J. 446 (2007).

This matter was concededly brought and concluded with great dispatch, as:

The Verified Complaint filed by the City and Order to Show Cause were issued on March 4, 2009;

Petitioners' Responsive Pleadings were filed pursuant to the Order to Show Cause on March 11, 2009;

The Response of the City and N.J. American were filed on March 13, 2009; and

Final Judgment were rendered by this Court on March 16, 2009.

In the wake of an imagined catastrophe, with the benefit of relief from the urgencies which called for haste last month, the Court is requested to reflect upon the facts which should have been revealed by the City and N.J. American and which have been revealed, only recently, to Petitioners.

## POINT I

### **RECONSIDERATION OF A FINAL JUDGMENT AND ITS UNDERLYING FINDINGS AND CONCLUSIONS OF LAW IS DUE THE NON-PREVAILING PARTY WHEN, AS HERE, THE COURT HAS RENDERED A DECISION IN RELIANCE ON AN INCOMPLETE RECORD OF FACTS WHICH WERE KNOWN BY, AND SHOULD HAVE BEEN REVEALED BY THE PREVAILING PARTY.**

Rules 1:7-4 and 4:49-2 combine to require the Court to reconsider its findings of fact when, within 20 days of the rendering of a final judgment, the court is presented with newly discovered evidence by the non-prevailing party which, if considered before the entry of the judgment would have had a substantial impact on the findings of fact.

Invoking this rule is particularly appropriate when, as here, there is clear evidence that the Court's finding of an essential fact was based on an incomplete record of evidence and even more appropriate when it appears that the completed record demonstrates that the prevailing party knew or should have known that both its factual representations and the court's findings in reliance on them were wrong.

The Rules are also appropriate when, as here, an unhurried examination of the record shows that:

1. Each of the factual statements which were submitted to the Court describing the Trenton Water Utility to be two separate operating systems, were supported factually by non-engineers. The verified complaint was verified by the City's Acting Business Administrator, Dennis Gonzalez, who is not an engineer.

2. No engineer has ever submitted a statement to the court which supports the conclusion that the system is now and has been operating as two systems.

3. The former City Business Administrator, William Guhl, certified that the system is one system, and that the portion of the system which is established beyond the City's boundaries, actually serves water to more than 5% of the City population.

4. The MWH 2006 engineering report --commissioned by the City of Trenton to determine the feasibility of a future separation of the Trenton Water Utility System into an OWUS and and IWUS,-- describes the present system as one, and addresses the myriad problems to be solved in order to create the OWUS and the IWUS.

5. The MWH report clearly reveals one of the crucial considerations to be resolved is based on the fact that a major sector of the City of Trenton population depends for its water pressure upon the water stored in the suburban facilities. The report discusses the alternatives of either replacing these essential facilities by building new elevated storage tanks in Trenton, or by leaving them in place and increasing the pumping capacity of the Central Pumping Station.

