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April 13, 2009

Hon. Linda R. Feinberg, A.J.S.C.  
Mercer County Vicinage  
Civil Courts Buildings  
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:

Please accept this letter brief in lieu of a more formal response to Petitioners' Notice of Motion for Reconsideration dated April 6, 2009. The City of Trenton respectfully requests this Court to deny that motion forthwith.

Petitioners' sole argument is that they have "discovered" information "which squarely contradicts the findings that the City asked this Court to make." See Letter brief dated April 6, 2009 filed by James P. Manahan on behalf of the Petitioners, page 2 (hereinafter "Brief, p. \_\_")<sup>1</sup>.

The basis for Petitioners' request for reconsideration is that it believes it is presenting the Court with "newly discovered evidence by the non-prevailing party... ." Brief, p. 4. Petitioners' argue that the "MWH 2006 Engineering Report" (referenced in the City's Verified Complaint initiating this matter) "describes the present system as one [system]." Brief,

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<sup>1</sup> It is interesting to note that Petitioners' seek the protection of this Court from what they "fear to be a fiscal blunder of unprecedented proportions" without conceding that the Faulkner Act (N.J.S.A. 40:69A-1, et seq.) provides no right to a referendum under the Local Budget Law N.J.S.A. 40A:4-1, et seq. either.

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p. 5. The gravamen of Petitioners' argument is that the MWH Report describes the IWUS and the OWUS as one system. Petitioners' further argue that the City of Trenton failed to provide a certification from an engineer indicating that the OWUS and IWUS were two physically disconnected systems.

The City of Trenton did not need to provide the certification from an engineer to argue that the systems were physically disconnected; the City of Trenton never argued that the systems were physically disconnected. In fact the City on numerous occasions in argument before the Court stated that the systems were physically connected. See Exhibit B to the Certification of James P. Manahan dated April 6, 2009, Transcript, pages 10:23 & 14:11-12 (hereinafter, Transcript, \_\_\_:\_\_\_). Counsel for New Jersey American Water similarly stated that the systems were physically interconnected as were a number of other systems owned by New Jersey American Water in other interconnected municipal water systems. See Transcript 18:12-17. In the beginning colloquy with counsel, the court itself recognized the MWH Report. Transcript, 4:24. The Court further stated "based on its investigation [which included the MWH Report], the City concluded that separating the two systems would promote public health and safety and it would benefit both the City of Trenton and the surrounding Townships." Transcript, 5:2-5.

As the City and NJAWC argued, and the court recognized, the OWUS has been operated as two systems. To operate in any of the Townships serviced by the OWUS, the City first needed consent from each of the Townships and then approval from the Board of Public Utilities (BPU). See Certification of Edward DeHope, ¶ 5, dated March 13, 2009 filed in support of the City's Order to Show Cause (hereinafter "DeHope Cert., ¶ \_\_\_") BPU approval was required to establish rates charged customers of the OWUS, which approval was not required for Trenton to establish rates in the City. DeHope Cert., ¶ 6 & ¶ 8. Even after the City equalized rates between customers of the OWUS and the IWUS, BPU maintained jurisdiction over the standards of service the City provided for customers of the OWUS, which jurisdiction again BPU did not have over standards of service provided to City customers in the IWUS. DeHope Cert., ¶ 9.

Ultimately, the reconsideration sought here is a rehash of the argument Petitioners' previously made before the court that

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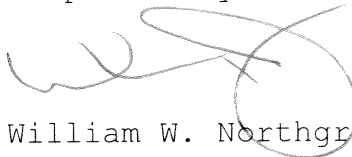
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the operation of the OWUS could have an impact on certain areas of the City of Trenton and therefore should be subject to referendum under the N.J.S.A. 40:62-3.1 (the "Public Utilities Law"). Whether the OWUS has an impact on the IWUS, (i.e., a water main break in Lawrence Township could impact water pressure in the City of Trenton) is not relevant to the analysis under N.J.S.A. 40:62-3.1. The Public Utilities Law looks at whether the system to be sold serves less than 5% of the City of Trenton. The OWUS does not serve any resident in the City of Trenton. That simple fact remains undisputed because it is not capable of dispute. The City does not argue that a water main break in Hopewell Township or Lawrence Township or any of the other Townships served by the OWUS or even a more remote municipal water system would not have an impact on the City of Trenton. Importantly however, the OWUS does not provide water or any water service to the City of Trenton.

Accordingly, the Court's ruling on March 16, 2009 should remain and Petitioners' Notice of Motion for reconsideration should be denied forthwith. We respectfully request the Court to either dismiss the Petitioner's Motion for Reconsideration immediately or schedule this matter for a hearing at the Court's very first opportunity so as to prevent any further delay in the critical sale of the OWUS to New Jersey American Water Company by the City of Trenton.

Thank you for your time and attention to this matter.

Respectfully submitted,



William W. Northgrave

WWN:sdc  
Enclosure

cc: James P. Manahan  
Ira G. Megdal