



Agenda Date: 8/1/07
Agenda Item: 9A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF UNITED COMMUNITIES –)
EXEMPTION FROM SMART GROWTH)
REGULATIONS AT N.J.A.C. 14:3-8.8(a)(6))
)
) ORDER APPROVING
) EXEMPTION
) NON-DOCKETED MATTER

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Board of Public Utilities (Board) adopted its Extension of Service Rules (Main Extension Rules) on November 16, 2004, and these rules were subsequently published in the New Jersey Register on December 20, 2004 at 36 N.J.R. 5928. The Main Extension Rules were promulgated to ensure that the Board's regulations governing extension of service reflected the State of New Jersey's Smart Growth policies. This Order will address a petition for an exemption from the Main Extension Rules as well as a petition for a waiver of the Board's rules governing the cost of underground extensions of service.

The Board will address a request by United Communities (Petitioner) for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(a)(6). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good. The Petitioner is a construction company based in Evesham Township, New Jersey. The Petitioner was awarded a contract by the Department of Defense to build new and upgrade existing military family housing on the grounds of the McGuire Air Force Base and Fort Dix joint military facility (the facility). This contract requires that the Petitioner will design and build the housing units to Energy Star specifications and also requires that electric service be provided via underground extensions. The facility is in an area not designated for growth. In a letter dated September 11, 2006, United Communities petitioned the Board for an exemption under N.J.A.C. 14:3-8.8(a)(6). Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of extending natural gas and electric service to the military family housing to be built on the grounds of the facility.

Once completed, the total project will encompass approximately 2,000 housing units, a business center and a warehouse. Preliminary estimates of the cost to extend service to the entire development are approximately \$5,500,000 to extend electric service from Jersey Central Power and Light (JCP&L) and approximately \$2,800,000 to extend natural gas service from Public Service Electric and Gas (PSE&G).

In early 2007, pursuant to the rules governing the cost of extending service in an area not designated for growth at N.J.A.C. 14:3-8.6, Petitioner paid PSE&G \$772,476 in contributions for the extension of gas service to 292 housing units that were renovated at the facility on parcels A, B, C, and F-1. Petitioner requests that, because they believe they meet the exemption criteria discussed below under N.J.A.C. 14:3-8.8(a)(6), the Board treat this amount as if it were an extension in an area designated for growth and any refunds that Petitioner would have been entitled to if the project were in an area designated for growth be returned from PSE&G to Petitioner.

On March 12, 2007 BPU staff met with the Petitioner and representatives from JCP&L and PSE&G to discuss the phases of development that will occur at the facility. Updated designs were provided to JCP&L on May 8, 2007 reflecting the extent of development planned for phase one (hereinafter referred to as Phase One). Phase One includes a warehouse, business center, and approximately 483 housing units on parcels A, B, C, F1, F3 and K. JCP&L estimated the total cost of extending electric service to Phase One at approximately \$794,400. The table below provides a break down of the Phase One costs per parcel.

If Smart Growth exemption granted and Petitioner pays underground costs:			Parcel
CIAC (nonrefundable)	Refundable	Total	
	6,200	6,200	A
	10,100	10,100	B
11,500	31,300	42,800	C
359,800		359,800	F-1
179,400		179,400	F-2
196,100		196,100	K
746,800	47,600	794,400	

As a result of this meeting, it became apparent that because there is existing overhead electric service to much of the facility, the costs of the electric extension would, under the Board's rules at N.J.A.C. 14:3-8.4, fall on the Petitioner as a contribution in aid of construction (CIAC) even if the exemption is granted. This is due to the fact that the rules require applicants for extensions to pay the differential between the cost of overhead and underground extensions of electric service. And since there is existing overhead service, the cost of providing it would be essentially zero, and thus the Petitioner would be responsible under N.J.A.C. 14:3-8.4 for the cost of all the underground service-- approximately \$746,800. The amount of \$47,600 would be refundable to the Petitioner because the buildings on parcels A, B, and C are new and not already served overhead. These calculations are premised on the Petitioner's promise to pay

for the cost of providing the trench for the electric cables. Therefore, Petitioner submitted a letter dated March 21, 2007 amending its original petition. This letter requested that the Board waive the rules at N.J.A.C. 14:3-8.4 under its authority at N.J.A.C. 14:1-1.2.

JCP&L submitted additional cost estimates outlined below showing the cost differential that is, the difference between the cost of serving the parcels overhead and the cost of providing underground service. This differential cost would normally be the responsibility of the Petitioner under N.J.A.C. 14:3-8.4. Petitioner is now asking the Board to waive this responsibility.

If Smart Growth exemption granted and underground rules waived:					
CIAC	Removal of Existing Facilities (nonrefundable)	Cost of Underground Extension (refundable differential)	Refundable	Total	Parcel
			6,200	6,200	A
			10,100	10,100	B
11,500			31,300	42,800	C
359,800	51,600	308,200		359,800	
179,400	57,800	121,600		179,400	
196,100	31,200	164,900		196,100	K
746,800	140,600	594,700	47,600	794,400	

Since filing its initial petition, Petitioner has modified its plans and thus will not extend natural gas to the new construction in Phase One. Instead of heating with natural gas, Petitioner will use an electric heat pump to heat and cool the buildings. The heat pumps Petitioner will install in Phase One are Hollowell All Climate Heat pumps (the Hollowell heat pump). The Hollowell heat pump is highly energy efficient and meets the Energy Star Plus requirements. According to Petitioner's estimate, installing the Hollowell heat pumps, instead of using natural gas for heating will result in a net energy savings. It is also projected that the use of the Hollowell heat pumps will result in overall lower energy cost for the military families operating these systems in their homes. Staff analysis concurs with these assessments.

This Order will now address each of Petitioner's issues in turn. First, to obtain an exemption based on a significant public good, N.J.A.C. 14:3-8.8(h)7 requires that a person must demonstrate to the Board that all of the following criteria are met: (1) The project or activity served by the extension would provide a significant benefit to the public or to the environment; (2) The project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of

Smart Growth and other State agencies; and (3) There is no practicable alternative means of providing the benefit while still complying with this subchapter. Petitioner asserts that this project meets these criteria as follows:

1. The project or activity served by the extension would provide a significant benefit to the public or to the environment;

Petitioner argues that having adequate housing facilities for military families on the base will constitute a benefit to the public because these on-base facilities will reduce the negative environmental impacts from military families commuting long distances to the facility. Moreover, Petitioner argues that the environment will benefit from the construction of highly efficient Energy Star compliant homes.

2. That the project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies; and

Here, Petitioner states that although the Pinelands is an area not designated for growth, construction of housing on the base is consistent with smart growth as it will constitute compact development within close proximity to an employment center.

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

Petitioner states that while the proposed military housing will not be located in areas designated for growth, the McGuire Air Force Base and Fort Dix joint military facility was built prior to the operational date of the Board's smart growth main extension rules. Building housing for military families off the base would be difficult considering the development restrictions of the Pinelands and would likely result in long commutes for military personnel. Therefore constructing the housing to serve the joint military facility in an area designated for growth is not practicable.

The Petitioner has indicated that any savings it receives on the cost of the extension of electric and gas service may be used to fund additional energy efficiency measures in the housing units. Also, Petitioner has indicated that it will fund all costs associated with trenching for the electric service extensions.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the Office of Smart Growth. Eileen Swan, Executive Director of the Office of Smart Growth confirmed that by granting this exemption, the Board will not negatively impact the achievement of the State's smart growth goals. Moreover, in a letter dated November 14, 2006, Charles M. Horner, Director of Regulatory Programs at the Pinelands Commission, determined that the Petitioner's development is consistent with the Pinelands Comprehensive Management Plan.

Second, Petitioner requests that the Board waive the requirements at N.J.A.C. 14:3-8.4 under its authority at N.J.A.C. 14:1-1.2. This rule section defines the Board's ability to relax or waive certain rules and states that

- (a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Board.

- (b) In special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules.

The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public;

Here Petitioner states that they meet the requirements of (b)1 above because it is in the interest of the general public to create adequate housing for military families and because the highly efficient heat pumps they intend to install meet the interests of the general public in so much as they will reduce the overall energy usage of the housing at the base and therefore result in environmental benefits for the citizens of New Jersey.

N.J.A.C. 14:1-1.2(b)(2) further states that

2. Any person or entity seeking waiver of any of the Board's rules or parts thereof shall apply in writing to the Secretary of the Board. A written request for waiver shall include the following:

- i. The specific rule(s) or part(s) thereof for which waiver is requested;
- ii. The reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required; and
- iii. Documentation to support the request for waiver.

Here Petitioner states that its letter of March 13, 2007 satisfies the requirement of (2) above and that the hardship or inconvenience that Petitioner would face if the Board's rules at N.J.A.C. 14:3-8.4 are not waived are that they would incur a substantial reduction in the amount of benefit that they would receive if the Board granted the exemption to the main extension rules.

If the waiver is not granted by the Board, Petitioner would be responsible for paying, as a non-refundable contribution in aid of construction, \$746,800. This dollar amount is the difference between serving the development with overhead lines, which already exists, and the cost of providing the service underground (note that this figure assumes that the Petitioner will provide the cost of the trench). Out of a total of \$794,400, only \$47,600 would be potentially saved by Petitioner if the exemption at N.J.A.C. 14:3-8.8(a)(6) is granted by the Board. If the Board grants the waiver of the underground rules at N.J.A.C. 14:3-8.4, Petitioner would be entitled to refunds on the differential costs of \$594,700. Petitioner states that if this request is not granted, Petitioner would pass along the cost to the military families in the form of a reduction of other amenities or services in the project. Both JCP&L and PSE&G expressed written opposition to the Petitioner's request that the Board waive the underground rules. Their opposition echoes the justification for the underground rules themselves, namely that the benefits of underground service inure only to those served from such facilities and it is just those customers who should bear the incremental cost of such service. Both regulated entities also expressed concerns that other applicants for extensions would seek similar treatment.

On July 17, 2007 staff received a letter from the Petitioner outlining the energy efficiency and energy saving measures that the Petitioner is committed to employing in the construction of Phase One. Specifically, Petitioner will:

1. Install smart meters at every individual residence;
2. Install the Hallowell All Climate Heat Pump along with programmable thermostat;
3. Install compact fluorescent lighting, energy star appliances, and low-e windows;
4. Implement a community-wide utility education program to improve energy awareness and give residents the knowledge to curtail wasteful energy consumption practices; and
5. Install hardware that will allow residents to participate in integrated load shedding programs that will cycle the air conditioning off at times of extreme power peaking.

DISCUSSION:

First, after reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(a)(6) for a project that will provide a significant public good are met. Specifically, the Board FINDS as follows: (1) the construction of gas and electric extensions to serve new and upgraded military housing on the grounds of the facility will constitute a significant benefit to the public; (2) the benefits of having adequate and highly efficient Energy Star housing located on the grounds of the McGuire Air Force Base and Fort Dix joint military facility outweigh the potential negative impact on the achievement of the State's smart growth goals as housing located near employment centers is a goal of the State Development and Redevelopment Plan; (3) Petitioner's development is consistent with the Pinelands Comprehensive Management Plan, and the Office of Smart Growth has also confirmed that by granting this exemption, the State's smart growth goals will not be negatively impacted; and (4) because the facility that the extensions will serve was constructed prior to the operative date of the Main Extension Rules there is no practicable alternative means of providing the benefit while still complying with the rules. Therefore, the Board HEREBY ACCEPTS AND APPROVES the exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(a)(6) for an extension and electric service to Phase One of the project on the grounds of the McGuire Air Force Base and Fort Dix joint military facility in New Jersey, pursuant to the contract between Petitioner and the United States Department of Defense.

Second, after reviewing the petition to waive the Board's underground rules at N.J.A.C. 14:3-8.4, the Board FINDS that the criteria in N.J.A.C. 14:1-1.2(b) have been met. Specifically, the Board FINDS that it is in the interest of the general public for the Board to waive its rules at N.J.A.C. 14:3-8.4 because as shown above, this project meets the criteria for a project that will result in a significant public good. The Board also FINDS that Petitioner's letter of March 21, 2007 satisfies the criteria in N.J.A.C. 14:1-1.2(b)(2) for a submission in writing and indicating that if the waiver were not granted, the exemption to the main extension rules would have of little value resulting in a hardship and inconvenience. The Board does not waive its rules lightly. However, the unique circumstances here warrant such a waiver. Specifically, this project, as discussed above, meets the criteria for an exemption to the main extension rules for a project that will provide a significant public good. This is a unique military facility, the proposed construction is consistent with the principals of smart growth and the State Development and Redevelopment Plan. The Petitioner will install highly energy efficient heat pumps that will reduce the project's total energy usage; and the Petitioner will provide the trench for JCP&L.

Moreover, Petitioner will provide numerous benefits that will positively impact New Jersey ratepayers. A critical factor in the Board's analysis of these issues is the commitment by Petitioner to undertake significant energy efficiency and energy conservation measures as outlined in their letter of July 17, 2007 summarized above. At the completion of Phase One, the Board HEREBY ORDERS the Petitioner to facilitate an inspection by staff to verify that the above measures were installed. Failure by the Petitioner to install these measures may result in

the revocation of this Order and the Petitioner may be required to pay the entire cost of extending electric and gas service to the facility.

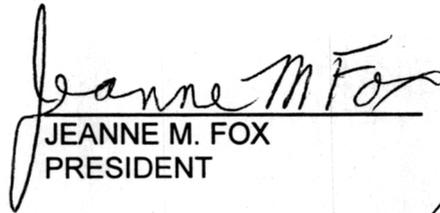
Pursuant to N.J.A.C. 14:3-8.8(j)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore, the Board HEREBY ORDERS that the distribution of costs of extending electric service to phase one shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area. The Board HEREBY ORDERS that Petitioner pay for the costs of providing the trench in Phase One. The Board HEREBY ORDERS that Petitioner pay for the costs of removal of existing overhead facilities on parcels F-1, F-2, and K. As indicated above, this cost is \$140,600. The Board HEREBY ORDERS that JCP&L apply the suggested formula in N.J.A.C. 14:3-8.10 to the cost totaling \$594,700 of the underground extensions to parcels F-1, F-2, and K and to the cost totaling \$47,600 for parcels A, B, and C.

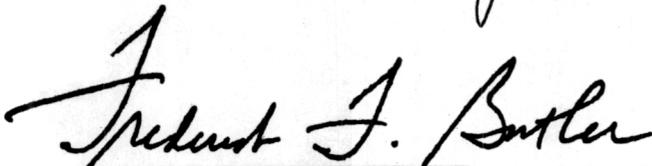
Finally, the Board HEREBY ORDERS that the distribution of costs of extending gas service to 292 housing units that were renovated at the facility on parcels A, C, and F-1 shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

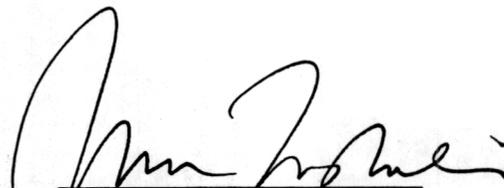
This exemption shall cover Phase One only. Petitioner will submit an amendment to this petition for subsequent phases of development for the Board to approve or deny.

DATED: 8/1/07

BOARD OF PUBLIC UTILITIES
BY:

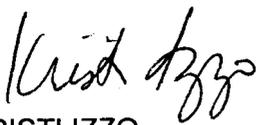

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

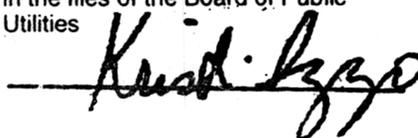

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF UNITED COMMUNITIES –
EXEMPTION FROM SMART GROWTH REGULATIONS
AT N.J.A.C. 14:3-8.8(a)(6)
NON-DOCKETED MATTER

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