



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

IN THE MATTER OF UNITARIAN UNIVERSALIST
CONGREGATION OF THE SOUTH JERSEY SHORE –
PETITION FOR AN EXEMPTION FROM MAIN
EXTENSION RULES AT N.J.A.C. 14:3-8.8(a)(6)

ORDER DENYING EXEMPTION

DOCKET NO. WW09100874

Jon Luoma for Unitarian Universalist Congregation, Galloway, NJ

Lendel G. Jones for New Jersey American Water Company, Cherry Hill, NJ

Philip J. Passanante, Esq., for Pepco Holdings, Inc./Atlantic City Electric Company,
Wilmington, Delaware

BY THE BOARD:

FACTUAL BACKGROUND

By this Order, the Board considers a request by the Unitarian Universalist Congregation of the South Jersey Shore ("Petitioner") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1).¹ 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 built a church located at 75 South Pomona Road, in Galloway New Jersey, an area not designated for growth.

Petitioner seeks relief from the rules that required Petitioner to pay the cost of extending water and electric service to the church. New Jersey American Water Company ("NJAW") estimated the cost of extending water service at \$2,970.84. Atlantic City Electric ("ACE") estimated the cost to extend electric service at \$3,719.51. Petitioner now seeks to have these costs reimbursed via this exemption petition. There will be no extension of natural gas service.

The Petitioner submits that it is exempt from the requirements for the costs of the extension pursuant to N.J.A.C. 14:3-8.8(b)(1), because the project will provide a significant public good, as described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that to obtain an exemption

¹ Petitioners filed for an exemption pursuant to N.J.A.C. 14:3-8.8(a)(6). Effective May 19, 2008, the Board amended its Main Extension Regulations and moved the relevant exemption from N.J.A.C. 14:3-8.8(a)(6) to N.J.A.C. 14:3-8.8(b)(1).

based on significant public good, a Petitioner 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; and (3) there is no practicable alternative means of providing the benefit while still complying with this subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth ("OSG") and other State agencies.

The Petitioner presents the following as to each criterion in N.J.A.C. 14:3-8.8(h):

1 Whether the Project or Activity Served by the Extension will Provide a Significant Benefit to the Public or to the Environment

Here Petitioner states that houses of worship constitute a benefit to the public because they fulfill spiritual needs and the congregation provides services to the community like donating food to families in need and supplies to a shelter for abused women. Petitioner also states that they provide multiple environmental benefits, including, but not limited to maximizing the forest cover on the building site and by building to be consistent with the LEED standards of the U.S. Green Building Council. Petitioner also states that the building is across the street from the Richard Stockton College campus and that the church intends to engage in expanded campus ministries. Petitioner states that its property is just outside the designated smart growth area.

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

The Petitioner states that the benefit of the project outweighs the smart growth considerations as the building has been fitted with a geothermal heating and cooling (an open loop system), an innovative heat recovery/ventilation and desiccant humidity control system called Life Breath allowing the building to be sealed tightly while efficiently providing plenty of healthy fresh air. In addition the church has a rooftop 0.5 kw solar photovoltaic array. Over 90 percent of the construction debris from the build was recycled and recycled materials were heavily used throughout. Both the gypsum sheet rock and aggregate concrete are particulate matter removed from power plant filters. All windows are Low-E, argon/krypton filled and the refrigerator and computer are Energy Star rated. The lighting system is all high efficiency fluorescent, aided by reflectors.

Two thirds of the 6.2 acre site has been preserved as intact oak-pine forest and all clearing and construction was restricted to the narrowest end of the trapezoidal tract adjacent to the existing roads and directly across from the Richard Stockton College of New Jersey.

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

The Petitioner states that the building site was purchased in 2003 after a thorough search of available sites and therefore there is no practical alternative to build within an area designated for growth. The site is directly across the street from new dormitories and parking lots for Richard Stockton College which is located in an area designated for growth.

The following steps were taken by Board Staff and are part of the record that the Board has reviewed.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), staff consulted with the Office of Smart Growth. Benjamin Spinelli, Executive Director of the Office of Smart Growth disagreed with Petitioner's arguments. In a letter dated June 22, 2007 Mr. Spinelli noted that Petitioner's property is in the Environmentally Sensitive Planning Area (PA5) and it is not within a designated center. Therefore, according to Mr. Spinelli, "development in this area is not consistent with the State Plan."

Staff also consulted with the Pinelands Commission as this property falls within the Pinelands. In a letter dated December 19, 2007 John C. Stokes, Executive Director of the Pinelands indicated that the construction of a church at 75 South Pomona Road, in Galloway is consistent with the Pinelands Comprehensive Management Plan Rural Planning Area.

DISCUSSION:

The Board's jurisdiction over utility extensions is found at N.J.S.A. 48:2-27, which provides that the Board "may ...require any public utility to establish, construct, maintain and operate any reasonable extension," where the extension is: (1) reasonable and practicable; (2) will furnish sufficient business to justify the construction; and (3) when the financial condition of the public utility reasonably warrants the original expenditure. In considering the requested exemption, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board has previously addressed the relationship between energy efficiency buildings and Smart Growth policies incorporated into the Board's Main Extension Rules at N.J.A.C. 14:3-8.1 et seq. in developing certain clean energy policies. The Board initially determined that buildings built in areas not designated for growth would not be eligible for benefits of the Smartstart clean energy programs. IN THE MATTER OF THE NEW JERSEY CLEAN ENERGY PROGRAM, Docket No. EO02120955 dated March 4, 2003. The Board subsequently modified that policy decision allowing "that the replacement or expansion of buildings in an area not designated for growth, on a single parcel by the current owner who has owned property for at least one year, would be eligible for program benefits, provided that such replacement or expansion will result in structure that, in total, no more than double the amount of square footage of the original building prior to expansion and provided that the original building was built before March 4, 2003." IN THE MATTER OF THE NEW JERSEY SMARTSTART BUILDINGS PROGRAM, non-docketed matter dated April 3, 2006. The Board further modified this program, incorporating an analysis of the public good and hardship exemptions pursuant to the Board's Main Extension Rules at N.J.A.C. 14:3-8.8. IN THE MATTER OF COMPREHENSIVE ENERGY EFFICIENCY AND RENEWABLE ENERGY RESOURCE ANALYSIS FOR 2005 – 2008: 2007 PROGRAMS AND BUDGETS: COMPLIANCE FILINGS, Docket No: EX04040276 dated December 27, 2007. Additionally, the Board has, on occasion, found that energy efficiencies can be a factor in analyzing exemption petitions. See 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 dated August 1, 2007 (finding that "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").

After reviewing the petition, the Board FINDS that not all of the above criteria are met. Specifically, the Board FINDS that the project is not consistent with smart growth and does not outweigh the benefits of smart growth. With regard to criterion number 2, the Office of Smart

Growth has determined that because the Petitioner's property is located within the Environmentally Sensitive Planning Area (PA5), "development in this area is not consistent with the State Plan." Moreover, unlike the petition the Board granted to O.C.E.A.N. Inc., where exemptions to the costs of constructing extensions of regulated entity service were sought for a new daycare center built on the grounds of an existing community college, and for which construction the Office of Smart Growth confirmed would not negatively impact the achievement of the State's smart growth goals, here a private church was constructed in an area not designated for growth. See I/M/O O.C.E.A.N. Inc Petitioner for Exemption from Smart Growth Rules N.J.A.C. 14:3-8.8(a)(5) (September 27, 2006) (non-docketed matter). The Board further finds that the fact that the building was constructed using energy efficient technology does not outweigh the benefits of smart growth. Finally, the Board notes that Petitioner does not meet the third criteria. Petitioner did not show that it could not have provided similar benefits in an area designated for growth.

Therefore, the Board HEREBY DENIES the exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1) for an extension of water and electric service to a church built by Unitarian Universalist Congregation of the South Jersey Shore at 75 Pomona Road, Galloway New Jersey.

DATED: 12/17/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

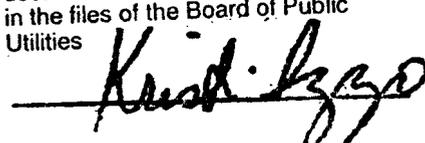

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
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


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Docket No.: WW09100874

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