



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

IN THE MATTER OF CENTEX HOMES, LLC PETITION)
FOR EXTENSION OF SERVICE AND/OR FOR) ORDER
EXEMPTION FROM MAIN EXTENSION RULES)
N.J.A.C. 14:3-8.1 ET SEQ. PURSUANT TO N.J.S.A.)
48:2-27 AND N.J.A.C. 14:3-8.8(a)(4) OR (a)(6)) NON-DOCKETED MATTER

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

The Board of Public Utilities ("Board") will address a request by Centex Homes ("Petitioner") for an extension of services pursuant to N.J.S.A. 48:2-27 or in the alternative an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(a)(4) as a project that commenced prior to March 20, 2005 or N.J.A.C. 14:3-8.8(a)(6) for a project that will provide a significant public good. As will be discussed below, the Board will examine this matter pursuant to N.J.S.A. 48:2-27 and applicable parts of N.J.A.C. 14:3-8.1 et seq. consistent with In re Centex Homes, LLC Petition for Extension of Serv., 411 N.J. Super. 244 (App.Div. 2009) ("Centex Decision")

FACTUAL BACKGROUND

Petitioner is a construction company based in Dallas, Texas. On November 20, 2006, pursuant to N.J.S.A. 48:2-27, N.J.A.C. 14:3-8.8(a)(4) and/or N.J.A.C. 14:3-8.8(a)(6), Petitioner filed a petition requesting that the Board order Jersey Central Power & Light ("JCP&L"), Verizon New Jersey, Inc. ("Verizon"), and New Jersey American Water Company ("NJAW") to pay the entire cost of extending electric, telephone and water utility services, respectively, to a 555 unit housing development in Howell, New Jersey at the Corner of Colts Neck Road and Route 33, running to Cranberry Road, know as "Colts Neck Crossing" (the "Project"). Subsequently, Petitioner requested that the Board order New Jersey Natural Gas Co. ("NJNG") to pay the

¹ Commissioner Elizabeth Randall recused herself in this matter and did not participate in the discussion or vote.

entire cost of extending natural gas service to the Project.² On November 30, 2007, the Board issued an Order denying the Petition in part and Ordering Petitioner to pay the cost of extending service for electric, gas and water service.

The estimated cost of extending service was initially estimated as follows: \$1,910,425 for electric service; \$3,193,716 for water service; \$2,876,635 for gas service; and \$919,000 for telephone service.

PROCEEDURAL HISTORY

This matter was heard at the Board's November 28, 2007 meeting, where the Board denied the petition. A written order was issued on November 30, 2007. Petitioner thereafter appealed the Board's order. On December 30, 2009, the Appellate Division reversed the Board's decision, invalidated certain provisions of the Board's Main Extension Rules and remanded the matter to the Board to be decided in light of the Appellate Division's opinion. In re Centex Homes, LLC Petition for Extension of Serv., 411 N.J. Super. 244 (App.Div. 2009). In the Centex Decision, the Appellate Division specifically noted the Board's authority to issue regulations pursuant to N.J.S.A. 48:2-27 et seq., including the allocation of costs between developers and utilities and requiring developers to bear the initial cost of an extension, which may be subsequently refunded if the development generates sufficient business.

The Board's jurisdiction over utility extensions can be found at N.J.S.A. 48:2-27, which provides that the Board

[M]ay ...require any public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction ... and when the financial condition of the public utility reasonably warrants the original expenditure.

The Board has adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

In light of the Centex Decision, the Board issued a Secretary's letter on March 24, 2010 advising that the Board will analyze all applications for main extensions made on or after December 30, 2009 pursuant to N.J.S.A. 48:2-27 by applying the applicable suggested formulae at N.J.A.C. 14:3-8.9 through 8.11, if all other statutory criteria are met. N.J.A.C. 14:3-8.1 et seq. The Board directed utilities to process an application for an extension as if it is in a Designated Growth Area³ under N.J.A.C. 14:3-8.1 et seq.

² NJNG opted to phase in the requirements of the Board's Main Extension rules pursuant to N.J.A.C. 14:3-8.6(c). Therefore, under the Board's rules and NJNG's tariff section 4, sheet 15, NJNG will require Petitioner to provide a deposit that will be refunded to the Petitioner over time.

³ In directing that this or any other project be treated as if they are in a "Designated Growth Area" pursuant to N.J.A.C. 14:3-8.1 et seq. the Board is implementing those portions of the Board's Main Extension Rules deemed permissible by the Appellate Division. The Board does not purport to make any judgment or change as to the State Development and Redevelopment Map or any planning area designation made by the State Planning Commission. Nor does this Order affect any statutory or regulatory obligations upon any party seeking a Main Extension.

During the course of this proceeding, no utility has come forward with an objection to the Petitioner's application or an order pursuant to N.J.S.A. 48:2-27 which would allow the Petitioner to pay a deposit and subsequently receive a refund if the property were treated as if it were in a Designated Growth Area under the rules. Additionally, no information has been presented to the Board to suggest that this expenditure is not reasonably warranted or that the extension will not furnish sufficient business to justify the extensions if a refund formula were applied.

On April 20, 2010, Petitioner submitted a request, in light of the Centex Decision, that the Board issue an Order including the following:

1. Order New Jersey American Water ("NJAW"), Jersey Central Power & Light ("JCP&L") and New Jersey Natural Gas ("NJNG") to provide Petitioner utility extension cost refunds pursuant to the Board's Main Extension Rules as outlined in the Board's March 24, 2010 letter;
2. Direct NJAW, JCP&L, NJNG and Petitioner to meet within thirty (30) days of the date of the Board's directive to attempt to reach agreement regarding the amount and procedures for making the utility extension cost refunds.
3. Direct NJAW, JCP&L, NJNG and Petitioner to report to the Board in writing within sixty (60) days from the date of the Board's order to advise the Board whether the parties have reached agreement regarding the refunds. If the parties have not reached agreements regarding the refunds, the parties shall advise the Board of any unresolved issues and the Board shall thereafter take such further actions as may be appropriate.

Upon review of the documents submitted in this matter as outlined in the Board's November 28, 2010 Order and in light of the Centex Opinion, the Board HEREBY FINDS that Petitioner's Project at Colt's Neck Crossing shall be treated under the Main Extension Rules as if it were in a Designated Growth Area. The Board HEREBY ORDERS that distribution of costs of extending electric, gas, water and telephone⁴ service to the Project 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 FURTHER ORDERS that any agreement between the utility and Petitioner pursuant to N.J.A.C. 14:3-8.7(c) shall require that the cost of the extension will be recovered through distribution revenue from these extensions.

The Board is aware that Petitioner paid certain deposits under protest and certain services were extended during the pendency of this matter. The Board is further aware that these cost calculations may have been based on the Board's Main Extension Rules as applicable to non-growth areas. Therefore, the Board HEREBY ORDERS NJAW, JCP&L and NJNG to recalculate Petitioner's deposit agreements as if the Project were located in a Designated Growth Area. In recalculating Petitioner's deposit agreements, NJAW, JCP&L and NJNG shall treat Petitioner's application *as within time* and deposits shall be refunded based on service estimates prior to installation and refunds for subsequent years shall be paid based on actual usage. NJAW, JCP&L and NJNG shall provide Petitioner with these estimates and individually or collectively meet with Petitioner within thirty (30) days of the date of this Order in an attempt to finalize deposit agreements. If an agreement cannot be reached within sixty (60) days of the

⁴ In its November 28, 2010 Order, the Board permitted the extension of telephone service for the Project to be treated as if it were in a Designated Growth Area. For the reasons set forth in this Order, the Board HEREBY REAFFIRMS that the extension of telephone service shall be treated as if it were in a Designated Growth Area.

date of this order, Petitioner shall notify the Board, in writing, and identify any outstanding issues. If the Board does not receive notice identifying outstanding issues within seventy-five (75) days of the date of this Order, this matter will be administratively concluded by the Board.

In summary the Board FINDS that the Petitioner has met the criteria set forth in N.J.S.A. 48:2-27 and shall be treated consistent with the Board's Main Extension Rules for areas Designated for Growth.

CONCLUSION

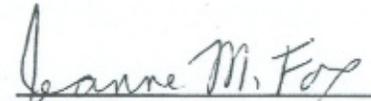
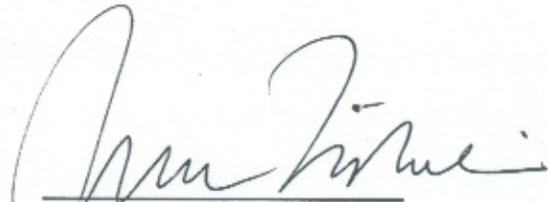
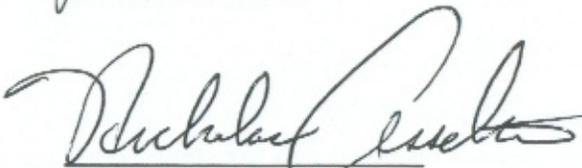
For the foregoing reasons, the Board HEREBY ORDERS that the distribution of costs of extending electric, telephone, gas and water service to the Colts Neck Crossing housing project to be built by Centex Homes in Howell New Jersey shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a Designated Growth Area.

DATED: 4/28/10

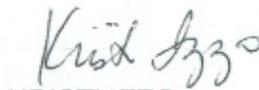
BOARD OF PUBLIC UTILITIES
BY:



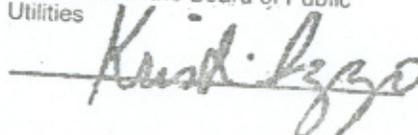
LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER
JOSEPH L. FIORDALISO
COMMISSIONER
NICHOLAS ASSELTA
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
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