



Agenda Date: 04/27/11
Agenda Item: VA

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE REQUEST OF ROCK-GW,) ORDER
LLC FOR A DETERMINATION THAT ITS PROVISION)
OF SEWERAGE TREATMENT SERVICE TO AN)
ADDITIONAL BUILDING WITHIN LOTS 1, 1.01, 1.02,)
1.03, 1.04, 1.05, 3, 4, 5.01 AND 5.02, BLOCK 1401;)
LOTS 1, 1.01, 1.02 AND 1.03, BLOCK 1402 IN)
FLORHAM PARK DOES NOT CONSTITUTE UTILITY)
SERVICE PURSUANT TO N.J.S.A. 48:2-13) DOCKET NO. WO10100739

Edward K. DeHope, Riker, Danzig, Scherer, Hyland and Perretti LLP, Morristown, NJ for
Petitioner

BY THE BOARD:

By letter dated September 30, 2010, Rock-GW, LLC (“Rock-GW” or “Petitioner”) requested a determination by the Board of Public Utilities (“Board”) that the proposed addition of an office building being constructed for occupancy by the BASF Corporation to be served by the Rock-GW sewerage treatment plant (“STP”) and collection system (collectively the “Sewer System”) would not constitute “public use” as defined in N.J.S.A. 48:2-13, and accordingly, that such use would not cause Rock-GW to be considered a public utility subject to the Board’s regulatory authority. The petition was filed in accordance with the provisions of a previous Board Order¹, which required the Petitioner to file with the Board prior to any additional development and expansion of service beyond the current structures.

Rock-GW is the owner of the STP. According to the petition, Rock-GW has no intention of providing sewer service to any party outside the boundary of the property as described. The streets on the property are private roads and do not affect any public right of way. A sewer main, built before the construction of the road, crosses under Route 24 as the STP serving the property is on the north side of Route 24 while the developable portion of the property is on the south side. This is the only part of the Sewer System within a public road.

The property consists of 650 acres of land in the Boroughs of Florham Park and Madison, New Jersey (the “Property”), and has been the subject of four filings with the Board.

¹ In re the Request of Rock-GW, LLC for a Determination that the Anticipated Provision of Sewerage Treatment Service by Rock-GW, LLC to the Additional Properties of Lots, 1, 3, 4, and 5, Block 1401; Lot 1, Block 1402 Florham Park; Lots 1 and 4, Block 1401 Madison Does Not Constitute Utility Service Pursuant to N.J.S.A. 48:2-13, BPU Docket No. WO08030188 (December 9, 2008) (“December 2008 Order”).

Initially, by Board Decision and Order dated November 6, 1997, the Board determined that Exxon Research and Engineering Company ("ER&E") was not a public utility by virtue of owning and operating the Sewer System located on the property to serve two office buildings owned and occupied by ER&E, one office building owned by ER&E and leased to AT&T and several small outbuildings, all located on the property. The Board concluded that the sale of a portion of the property would not require regulation of ER&E as a public utility since sewer service was not being offered to the public. Subsequently, Rock-GW has demolished the ER&E office/research buildings on the property.

By letter dated October 6, 1998, ER&E advised the Board that it planned to sell an additional portion of the property to Rock-Florham for the construction of two more office buildings totaling approximately 445,000 square feet that, upon completion, would also be served by the Sewer System. ER&E further advised the Board that, as was the case in 1998, the Sewer System: (1) had sufficient excess capacity with which to serve all structures on the property, existing as well as proposed; (2) continued to have all necessary DEP permits; (3) continued to be operated in accordance with all applicable laws and regulations; and (4) did not and would not be providing service to any off-site structure. By Board Order dated January 20, 1999 (Docket No. WO98111378), the Board found that the proposed sale would "...not render [Exxon] a public utility operating sewerage facilities for public use." The Board also directed that, in the event that the Sewer Service is used to serve additional customers within the original 650 acre site or is sold, ER&E shall petition the Board for a determination as to the utility status of the Sewer System based on then present conditions.

By Order dated June 7, 2006 (Docket No. WO06050380), the Board concluded that the construction and connection of an office/training facility for the New York Jets football team ("Jets") to the STP of Rock-GW would not require the Sewer System to be regulated as a public utility.

By Order dated December 8, 2008 (Docket No. WO08030188), the Board determined that the addition of two buildings (a medical office building owned by Rock-GW and a Marriott Hotel) would not render Rock-GW a public utility. This approval was limited specifically to the facts presented and advised that changing conditions, including additional development and expansion of service beyond those buildings contemplated in this Order, could subsequently lead to the modification of the Board's opinion.

The 1997, 1999, 2006 and 2008 Orders are collectively referred to as the "Prior Orders".

The Property currently has three occupied office buildings, two leased by Novartis and one by AT&T, and an office/training facility for the New York Jets football team.

Based on the representations submitted on behalf of the Petitioner, the Board accepted the following facts in its December 2008 Order:

1. A portion of the property may be sold to the Marriott Corporation to construct a 250-room hotel;
2. A portion of the property may be leased to Atlantic Health System to construct a small medical office building;
3. All structures to be served by the STP are located on the original 650 acres;
4. The STP will not be expanded and, including the possible addition of the hotel and medical building, will continue to operate at a level below its capacity;

5. The operation of the STP will have no impact on the regulated market related to sewerage service; and
6. The STP continues to possess all necessary DEP permits and will be operated by a duly licensed operator pursuant to all applicable laws and regulations.

Petitioner advised that due to the economy, construction of the Marriott Hotel and the medical office building has not yet begun and will not begin in the foreseeable future.

The Petitioner indicated that it entered into an agreement with the Borough of Florham Park ("Borough") on April 13, 2010, under which the Rock-GW wastewater collection system will be connected to Florham Park's Hassock Brook Trunk Sewer and all wastewater generated from the Petitioner's site will thenceforth be treated at Florham Park's sewerage treatment plant ("FPSTP"). Rates currently charged to the occupants of the facilities on the Petitioner's site mirror the rates charged by the Borough for service in its service area. Following the connection of the Petitioner's collection system to the FPSTP, the Borough will bill each building individually. The existing Rock-GW wastewater treatment plant will be decommissioned and converted to a pump station. The force main will be dedicated to the Borough and will thereafter be maintained and operated by the Borough. The pump station will continue to be owned and maintained by Rock-GW. As of the date of this order, Rock-GW has not yet interconnected with FPSTP at the Hassock Brook Trunk Sewer.

By letter dated March 8, 2011, Rate Counsel filed its comments supporting a determination that Rock-GW should not be found to be a public utility subject to the Board's regulatory authority. Rate Counsel concluded that Rock-GW is not providing wastewater service to the public as there are no residential customers serviced on the Property. Rate Counsel has no objection to the issuance of a new declaratory ruling reaffirming the Board's prior rulings that Rock-GW should not be considered a public utility subject to Board jurisdiction. However, any declaratory ruling issued in response to this Petition should contain language that indicates that the relief has been granted based on the facts presented and if the facts change, the Board could assert jurisdiction.

Based on the representation submitted on behalf of the Petitioner, the Board **ACCEPTS** the following facts:

1. The connection of the BASF office building will replace the previously authorized Marriott Hotel as mentioned in the December 2008 Order;
2. There is currently no planned construction date for the medical office building previously approved in the December 2008 Order.
3. Rock-GW intends to decommission the existing Rock-GW wastewater treatment plant and convert it to a pump station when Rock-GW's wastewater collection system is connected to FPSTP and all wastewater generated from the Petitioner's site will thenceforth be treated at Florham Park's sewerage treatment plant.
4. All structures to be served by the STP are located on the original 650 acres;
5. The STP will not be expanded and, including the addition of the BASF building and possible addition of the medical building, will continue to operate at a level below its capacity;
6. The operation of the STP will have no impact on the regulated market related to sewerage service; and
7. The STP continues to possess all necessary DEP permits and will be operated by a duly licensed operator pursuant to all applicable laws and regulations.

8. Rock-GW agreed that if the BASF or Medical buildings are not built prior to December 31, 2012, then the authorization as to the un-built building will expire and Rock-GW will have to reapply to the Board.

Therefore, the Board, based on the foregoing and the record in this matter, **HEREBY ORDERS** that the proposed modification to the property will not render Rock-GW a public utility operating sewerage facilities for public use subject to regulation by the Board. This determination is made in part on the fact that the BASF building will replace the previously approved planned Marriot Hotel on the property. Additionally, the Board **HEREBY ORDERS** that Rock-GW will have until December 31, 2012 to construct the BASF building and the medical office building.

Rock-GW is further advised that this determination is limited specifically to the facts presented and that changing conditions, including additional development and expansion of service beyond those buildings as described in this Order, including the previously planned Marriot Hotel and/or the addition of retail customers and/or residential customers, must be the subject of a petition filed with the Board in advance of any such development, and could subsequently lead to the modification of the Board's determination. The Board will make a further determination based upon the conditions present at that time.

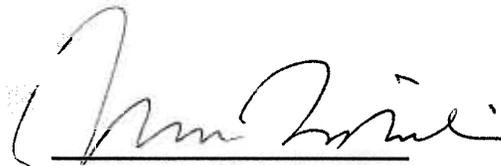
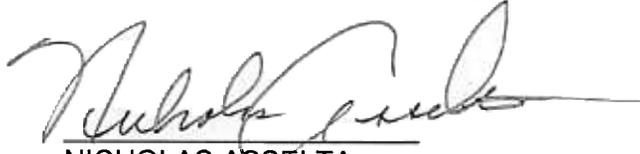
Rock-GW is additionally advised that construction of the BASF building and medical office after December 31, 2012, must be the subject of a petition filed with the Board in advance of any such development, and could subsequently lead to the modification of the Board's determination.

DATED: 4/27/11

BOARD OF PUBLIC UTILITIES
BY:



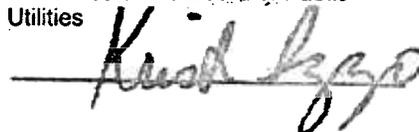
LEE A. SOLOMON
PRESIDENT


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 Utilities



IN THE MATTER OF THE REQUEST OF ROCK-GW, LLC FOR A DETERMINATION THAT
ITS PROVISION OF SEWERAGE TREATMENT SERVICE TO AN ADDITIONAL BUILDING
WITHIN LOTS 1, 1.01, 1.02, 1.03, 1.04, 1.05, 3, 4, 5.01 AND 5.02, BLOCK 1401; LOTS 1,
1.01, 1.02 AND 1.03, BLOCK 1402 IN FLORHAM PARK DOES NOT CONSTITUTE UTILITY
SERVICE PURSUANT TO N.J.S.A. 48:2-13CAPTION

BPU DOCKET NO. WO10100739

SERVICE LIST

Edward K. DeHope, Esq.
Riker, Danzig, Scherer, Hyland & Perretti LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962

Stefanie A. Brand, Esq., Director
Susan McClure, Esq.
Bernard Smalls, Legal Associate
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005 Newark, NJ 07102

Alex Moreau, DAG
Geoffrey Gersten, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street 5th Floor
P.O. Box 45029
Newark, New Jersey 07102