



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CLEAN ENERGY

IN THE MATTER OF UNITED COMMUNITIES, LLC – ) ORDER APPROVING EXEMPTION  
EXEMPTION FROM UNDERGROUND EXTENSION )  
REGULATIONS AT N.J.A.C. 14:3-8.4 AND EXCEPTION ) Docket No. EO09010039  
FROM RULES GOVERNING ENERGY STAR HOMES )  
PROGRAM )

Parties of Record:

**John D. Cranmer, Esq.**, Archer & Greiner, P.C., for United Communities  
**Sally J. Cheong**, Jersey Central Power & Light

BY THE BOARD:

United Communities, LLC (the “Petitioner”) is a family owned, New Jersey based housing and apartment management company. In 2006, the United States Department of Defense granted Petitioner a long term contract to design, build, maintain and manage the housing for members of the United States military personnel located on the Joint Base McGuire-Dix-Lakehurst (formerly McGuire Air Force Base, Navy Lakehurst and Fort Dix). This Board Order addresses exemption requests relating to the unique housing needs of this joint military base.

When complete, the military housing projects, which are the subject of this Order, will involve 2084 total residential units; including building 1,635 new units (to replace older units) and renovations to 449 units, in addition to a business center, two community centers and a warehouse (the “Project”). Jersey Central Power and Light (“JCP&L”) provides onsite electric service to Fort Dix by way of an underground main extension and provides electricity to a master meter at a demarcation point outside of McGuire Air Force Base (“McGuire AFB”).

On January 5, 2009, United Communities, LLC (“Petitioner”) filed a Pro Se Petition with the New Jersey Board of Public Utilities (“Board”) seeking waiver relief from the rules governing the costs of underground extensions of service set forth in N.J.A.C. 14:3-8.4 for phases two and three of the project and seeking eligibility for incentives under the Energy Star Homes Program. Subsequently, on July 1, 2010, Petitioner, through counsel, filed a subsequent Petition seeking substantially the same relief. Both the January 5, 2009 and July 1, 2010 Petitions (collectively,

the "Petition") also requested additional relief, all of which additional requests have subsequently been withdrawn.<sup>1</sup>

I. The Board's 2007 Order for Phase One of the Project

In 2007, the Board issued an Order, In The Matter of United Communities-Exemption From Smart Growth Regulations at N.J.A.C. 14:3-8-8(a)(6) (non-docketed), dated August 1, 2007 (the "2007 Order") granting Petitioner a waiver of certain provisions of the Board's Main Extension regulations and the rules governing the cost of underground extensions of service for the first phase of its Project. The relief requested herein relates to Phases Two and Three of the Project.

In the 2007 Order, the Board found 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 exemption were met. Specifically, the Board found that (1) the construction of 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 joint military 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 approved 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.

In addition, after reviewing the request to waive the Board's rules governing the cost of underground service extensions at N.J.A.C.14:3-8.4, the Board found that a waiver was appropriate pursuant to the Board's general ability to waive its regulations at N.J.A.C. 14:1-1.2(b). Specifically, the Board found 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 set forth above, this Project meets the criteria for a project that will result in a significant public good.

Significantly, the Board noted that Petitioner would be seeking additional exemptions in the future relating to subsequent phases of development for the Project.

II. Petitioner's 2009 and 2010 Petitions for Phases Two and Three of the Project

A. Waiver of Underground Rules

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<sup>1</sup> Pursuant to the Board's October 22, 2010 Order in In the Matter of the Board's Main Extension Rules N.J.A.C. 14:3-8.1 et seq., Non-Docketed Matter, Petitioner was determined to have a pending petition and therefore Phase two and three of this project was treated as within a growth area for purposes of the Main Extension Rules at N.J.A.C. 14:3-8.1 et seq.

In Phases Two and Three of the Project, like Phase One, there was existing overhead electric service serving prior housing units which was removed upon the construction and reconfiguration of the new housing units. Therefore, the costs of the new 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"). 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 was 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 \$394,763. These calculations are premised on the Petitioner's promise to pay for the trenching costs for the electric cables.

The cost estimates summarized below, shows 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. The Board granted relief from this requirement for Phase One of the Project as set forth in the 2007 Order and invited the Petitioner to file for relief for subsequent phases of the Project. The Petitioner is now asking the Board to waive this responsibility for Phases Two and Three of the Project.

<b>Parcel</b>	<b>CIAC</b>	<b>Removal of Existing Facilities (nonrefundable)</b>	<b>Cost of Underground Extension (refundable differential)</b>
F-2	\$217,691	\$44,312	\$173,379
G	\$177,072	\$35,560	\$141,512
<b>Totals</b>	<b>\$394,763</b>	<b>\$79,872</b>	<b>\$314,891</b>

In the 2007 Order, the Board found that the waiver of the underground rules in N.J.A.C. 14:3-8.4 was justified because of numerous benefits that will positively impact New Jersey ratepayers, the consistency with smart growth principals and significant energy efficiency and conservation measures and the unique nature of the military facility. For the same reasons, and under the same conditions, as set forth in the 2007 Petition, the Petitioner seeks relief from N.J.A.C. 14:3-8.4 to permit reimbursement of its underground electric extension costs pursuant to N.J.A.C. 14:3-8.10.

Petitioner continues to use an electric heat pump to heat and cool the buildings. The heat pumps Petitioner installs are the Hallowell All Climate Heat pumps (the Hallowell Heat Pump) or an equivalent system such as York's. The Heat Pumps are highly energy efficient and meet the Energy Star Plus requirements. According to Petitioner's estimate, installing the Hallowell 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 Hallowell Heat Pumps will result in overall lower energy cost for the military families operating these systems in their homes. In connection with the Board's consideration of the facts that led to the 2007 Order, Staff analyzed and concurred with these assessments.

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.

Petitioner states its Project will constitute compact development within close proximity to an existing employment center. Petitioner also states that building housing for military families off the base would be difficult considering the development restrictions within the Pinelands Area and would likely result in long commutes for military personnel if that housing was built outside of the Pinelands Area.

The Petitioner has submitted documentation to Board's Staff that demonstrates that burial of the electric cables is a United States Department of Defense requirement and Petitioner is therefore required to bury the cables, notwithstanding the existing overhead transmission lines. The Petitioner has also indicated that, consistent with the requirements in the 2007 Order, it will fund all costs associated with trenching for the electric service extensions.

As required by the then operative Main Extension Rules at 14:3-8.1 et seq., prior to the 2007 Order Board Staff consulted with Eileen Swan, then Executive Director of the Office of Smart Growth. She confirmed that in granting the exemption from Smart Growth standards, the Board would not negatively impact the achievement of the State's Smart Growth goals. Moreover, in a letter to the Board 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.

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.
  1. 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 it meets 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.

If the waiver is not granted by the Board, Petitioner would be responsible for paying, as a non-refundable CIAC, \$394,763.00. This dollar amount is the difference between serving the development with overhead lines, which already exist, and the cost of providing the service underground (note that this figure assumes that the Petitioner will provide the cost of the utility trenching). 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 \$314,891. Petitioner states that if this request is not granted, Petitioner would be forced to pass along the cost to the military families in the form of a reduction of other amenities or services in the Project.

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

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.

Petitioner has confirmed in a letter dated December 6, 2010, that, except for item 5, which has been made impossible because JCP&L has eliminated the load shedding program, it has fully implemented the above-referenced energy efficiency and energy savings measures for Phase One and will continue to move forward with the same measures for Phases Two and Three of the Project.

B. Waiver of the Energy Star Homes Program Rates

1. Background

The Board, in conjunction with New Jersey's utilities, utilizes the Energy Star Homes Program (the "Program"), to provide incentives to builders who construct homes that are 15% more efficient than homes built to 2006 International Energy Conservation Code standards ("IECC" 2006). In order to achieve this classification, a home must score 85 or less out of a possible 100 points on the Home Energy Rating Scale ("HERS"). New homes and gutting and rehabilitation of existing homes throughout the State can qualify for the Energy Star home designation and incentives; however, pursuant to Board policy, new homes must be located in designated New Jersey Smart Growth areas in order to qualify for incentives and the homes must be directly metered for electric or gas by at least one public utility company.

The Energy Star incentive structure offers the builder varying incentive amounts based on the type of residence (single-family, townhouse, and multi-family) and the level of energy efficiency that the home achieves compared to a reference home. Incentives range from \$1,750 to \$3,500, depending on the type of residence.

Under the Program, builders make application to the BPU Program Administrator, MaGrann Associates ("MaGrann"), to be admitted into the Program and are initially either classified as being in a Smart Growth Area or outside of a Smart Growth Area. While both Smart Growth and non-Smart Growth developments are enrolled in the Energy Star Homes Program, only those developments that are located in a Smart Growth Area are eligible for rebates.

After an application for a project has been received by MaGrann and classified as being either "in" or "out" of a Smart Growth Area: (i) the project is reviewed by MaGrann for Program compliance, including plan review and approval; (ii) inspections are made by MaGrann during construction; and (iii) when a unit in a project has been completed and thereafter tested by MaGrann, provided the unit meets the Program requirements, MaGrann issues a "Certificate" demonstrating compliance with the New Jersey Energy Star Homes Program. This Certificate is issued regardless of whether the project is in or outside of a Smart Growth Area.

For those units that are "Certified" by MaGrann and located in a Smart Growth Area and provided that the unit has at least one public utility meter, MaGrann automatically issues a rebate document that is sent by MaGrann to Honeywell for processing/approval, who then sends it to Office of Clean Energy ("OCE") for approval. OCE then forwards the rebate document to the Department of the Treasury for disbursement of rebate funds. On the other hand, for those units in the Program which are outside of a Smart Growth Area, while the Certificate is issued as above, there is no "rebate document" that is generated by MaGrann.

## 2. Fort Dix and McGuire Military Housing Project

Petitioner applied to the Program in May, 2008, for 1635 multi-family homes in the Project. As required by the Program, MaGrann reviewed the application, plans and specifications for the homes and determined that Petitioner was eligible for the Program and was enrolled into the Program, in October, 2009.

The Petition seeks eligibility for Energy Star Homes Program incentives for 599 units in the Project. The Petitioner has acknowledged that 1036 Project units in the Program were under construction when the application to the Program was submitted and, as a result, these units did not receive all of the required inspections. Therefore, although these units were built to New Jersey Energy Star criteria, and received final inspections and an equivalency Certificate from MaGrann, these 1036 units are ineligible for incentives.

At the Board's request, MaGrann reviewed the status of the 599 units that are the subject of Petitioner's request for relief to be eligible for incentives. MaGrann has prepared a spreadsheet that provides a detailed analysis of the 599 units (the 599 units are hereafter the "Rebate Eligible Units"), including unit location, date of Certification, and rebate level. In summary, MaGrann reports that the following units are enrolled in the Program and meet the construction related eligibility criteria:

<u>Parcel</u>	<u>Number of Units</u>	<u>Locatio</u>	<u>Meter Type</u>
F2	102	Fort Dix	JCP&L Meter
A3	229	McGuire	UC Meter (non utility)
A4	<u>268</u>	McGuire	UC Meter (non utility)
	599		

Of the Rebate Eligible Units, there are 102 units on Fort Dix directly metered by JCP&L with potential rebates totaling \$186,720.60. These units have received final testing and MaGrann has issued approval Certificates. These units are located outside of a Smart Growth Area.

The remaining 497 of the Rebate Eligible Units are located on McGuire and therefore also located outside of a Smart Growth Area. These units are metered by Petitioner as JCP&L does not provide on site electric service at McGuire AFB. These units represent potential rebates totaling \$761,100.00. Of these 497 units, 412 units have received final testing and approval Certificates have been issued by MaGrann. The remaining 85 units still either need to pass the final testing or have been tested but do not yet have the Certificates issued by MaGrann. All of these units are expected to be completed by years' end.

While JCP&L provides on-site electric service and directly meters all of the military homes on Fort Dix, as a result of an historical anomaly, JCP&L provides electric service to a master meter at an Air Force owned substation at McGuire (the "McGuire Master Meter") and does not provide on site electric service to McGuire. The Petitioner has installed the same electric meters at each McGuire unit that JCP&L installed on the Fort Dix side of the Project. The Petitioner is also paying Societal Benefits Charges ("SBCs") for the McGuire Master Meter. In 2010, Petitioner paid \$96,765.82 in SBCs for the McGuire Master Meter and this amount will only increase as the Project is fully built out.

As required by the Department of Defense, the Petitioner reads the meter for each of the McGuire units and each resident receives an informational or "mock bill" that contains the same basic information as most utility bills (beginning read, ending read, read date, energy usage, etc.). However, each military family is not directly responsible for paying their electric utility costs. The Department of Defense provides each family with a housing and utility allowance known as a Basic Allowance for Housing ("BAH"), which is then turned over to military housing providers like Petitioner to cover rent and utility costs. When the Petitioner receives the BAH, it in turn pays the military family's utility costs, regardless of whether the unit is individually metered.

The Petitioner made a complete application to MaGrann for inclusion in the New Jersey Energy Star Homes Program and was enrolled in the Program in October, 2009. Provided Petitioner's units met all of the Program criteria, the Petitioner would have automatically received a financial incentive or "rebate check" for each Energy Star Certified unit. According to MaGrann, of the

1635 units in the Project that are in the Program, 102 units on Fort Dix have been identified as fully eligible for incentives, except for being located outside of a Smart Growth Area and an additional 497 units on McGuire have been identified to be fully eligible for incentives (412 approved and 85 pending approval), except for being located outside of a Smart Growth Area and lacking a utility meter at each individual unit. As noted above, 1036 of the 1635 units enrolled in the Program are not eligible for incentives.

#### DISCUSSION:

(a) Smart Growth Requirement for military facilities

The Board has previously recognized that military facilities should be considered an exception to the Board's Smart Growth rules. In the Board Order captioned In The Matter of The New Jersey Smart Start Building Programs (Non-Docketed Matter), dated April 3, 2006, (the "2006 Order") military facilities outside of a Smart Growth Area were made eligible for incentives. The 2006 Order specifically states that:

Staff recommends the Board clarify that the Order also applies to municipally owned buildings, hospitals, or military facilities in areas not designated for growth. Upon adoption of Staff's recommendation, these facilities would be permitted to seek program funding for the replacement or expansion of structures in areas not designated for smart growth, provided the expanded or replacement structures no more than double the amount of square footage of the existing building prior to expansion or replacement, and provided that the original building was constructed before March 4, 2003.

The Board followed Staff's recommendation and created the military facility exemption to the Smart Growth Rules for funding criteria for a number of Board programs.

Consistent with the Board's 2006 Order, the 599 units located at Fort Dix and McGuire are military facilities. The housing is exclusively reserved for military families, is located on an active military base and is owned, in fee, by the United States. Likewise, the 599 units were replacement housing, replacing units that were built well before 2003 and the expanded or replacement structures no more than double the amount of square footage of the units prior to replacement.

Likewise, in the 2007 Order granting Petitioner relief for Phase One of this Project, the Board recognized that the Project has nonetheless been deemed by the Pinelands Commission to be consistent with Smart Growth. Although the proposed military housing will not be located in an area designated for growth, as the McGuire Air Force Base and Fort Dix joint military facility was built prior to the operational date of New Jersey's Smart Growth Rules. Building off-base housing for military families would be difficult considering the development restrictions in the Pinelands and, if housing was built outside the Pinelands Area, 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 practical.

(b) The 497 McGuire Units and the Public Utility Meter Requirement

In addition to the Smart Growth issue set forth above, the 497 units on McGuire have been identified by MaGrann to be fully eligible for incentives, except for lacking at least one public

utility meter at each individual unit.

Petitioner has demonstrated that compliance with the single utility meter requirement for the 497 McGuire units is outside of Petitioner's control as the units are not directly serviced by a public utility. Petitioner has even gone so far as to install the same meters at each unit as JCP&L is using on Fort Dix at units served directly by JCP&L. The Board's "single utility meter" rule was instituted, in part, to make sure that SBCs were properly charged. Petitioner is paying SBCs for the McGuire Master Meter. In 2010, Petitioner paid \$96,765.82 in SBCs for the energy provided to the McGuire Master Meter and this amount will only increase as the Project is fully built out.

The Board's "single utility meter" rule was also designed to make sure that residents received an individual bill to track and control energy usage, and the Petitioner is able to address this concern. However, in this instance it is significant that the military families are not directly responsible for paying their own electric costs. The Department of Defense provides each family with a housing and utility allowance known as a BAH, which is turned over to military housing providers in consideration of rent and utility costs. In addition, as noted above, the Petitioner has installed the exact same utility grade electric meter at the McGuire units as installed by JCP&L at the Fort Dix units served directly by JCP&L. The Petitioner also reads the meters for each of the McGuire units and each resident receives a "mock bill" that contains the basic information contained in most utility bills (beginning read, ending read, read date, energy usage, etc.).

(c) Waiver Request

Petitioner requests that the Board waive the Energy Star Homes Program requirements that new units must be located in designated New Jersey Smart Growth areas in order to qualify for Program incentives and that the units must be directly metered for electric or gas by at least one public utility company. The waiver is requested under the Board's authority at N.J.A.C. 14:1-1.2, which defines the Board's ability to relax or waive certain rules and states that:

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.

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

1. 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 it meets 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 production of highly energy efficient homes meeting the Energy Star requirements serves the interests of the general public because they will reduce the overall energy usage of the housing at the joint military facility 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 Petition satisfies the requirement of (2) above and that the hardship or inconvenience that Petitioner would face if the Board's rules 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 waiver of the Energy Star Homes Program rules.

If the waiver is not granted by the Board, Petitioner would not be eligible to receive Energy Star Homes Program incentives of up to \$947,820.60. This dollar amount represents the amount of rebates that the BPU Program Manager, MaGrann Associates, has determined would be due Petitioner if all of the 599 units that are the subject of the Petition are Certified by MaGrann Associates as meeting the Energy Star Homes Program requirements and the waiver request is granted. Petitioner states that if this waiver request is not granted, Petitioner would be forced to pass along the cost to the military families in the form of a reduction of other amenities or services in the Project and would be forced to withdraw the remaining uncertified units from the Energy Star Homes Program.

Therefore, the Board **FINDS** that after reviewing the Petition to waive the Board's underground rules at N.J.A.C.14:3-8.4, and the rules related to the Energy Star Homes Program's Smart Growth and single utility meter requirements, 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, as well as the Energy Star Homes Program's Smart Growth and single utility meter requirements, because as the Board determined in the 2007 Order, as set forth above, this Project meets the criteria for a project that will result in a significant public good. The Board does not waive its rules lightly. However, the unique circumstances here warrant such a waiver. Specifically, this Project, as recognized in the 2007 Order and reiterated herein, will provide a significant public good. This is a unique military facility where the Department of Defense requires burial of the existing overhead utility lines and the proposed construction is consistent with the principles 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.

The Board also deems it significant that the military families do not directly pay their own utility costs and, instead, the utilities remain in the name of the Petitioner and are paid through the Department of Defense BAH Program, which covers military family housing and utility expenses.

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 the Petition and letters of July 17, 2007 and December 6, 2010, summarized above.

It is also significant that the Petitioner submitted a timely and complete application for inclusion in the Program for the Rebate Eligible Units, has complied with the construction requirements of the Program that significantly lower energy usage for the Rebate Eligible Units and has fully complied with the Program requirements that are within Petitioner's control.

The Board **HEREBY ORDERS** that Petitioner pay for the costs of providing the trench in Phases Two and Three of the Project. The Board **HEREBY ORDERS** that Petitioner pay for the costs of removal of existing overhead facilities on parcels G and F-2. The Board **HEREBY ORDERS** that JCP&L apply the suggested formula in N.J.A.C. 14:3-8.10, to the cost totaling \$314,891 of the underground extensions to parcels G and F-2.

Finally, as to the request that the Board waive certain requirements of its Energy Star Homes Program, the Board notes that pursuant to its April 3, 2006 Order, In the Matter of the New Jersey Smartstart Buildings Programs, the Board limited the applicability of the smart growth requirements for "hospitals, military facilities and municipal buildings." Consistent with this Order and as discussed above, the Board determines that it is appropriate to grant the waiver of the Energy Star Homes Program's Smart Growth and single utility meter requirements for this Project and **HEREBY ORDERS** that BPU's Program Manager, MaGrann Associates, issue and process the rebate applications for the 514<sup>2</sup> units in the Project that have been Certified by MaGrann Associates to date, and to process the rebate applications for the additional 85 units upon Certification that the units meet the Program requirements, other than the waived Smart Growth and single utility meter requirements.

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<sup>2</sup> This number was mistakenly listed as 412 in the version previously released. However, the number of units Energy Star certified should be 514, not 412. 514 added to the 85 units (correct in the Order) to be certified, totals 599, which is the consistent calculation throughout the document. The change to 514 is the only language that has been corrected from the previously issued Order.

This Order is Effective on December 24, 2011

DATED: 12/15/11

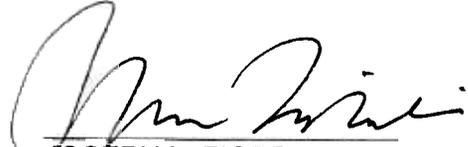
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BY:



LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER



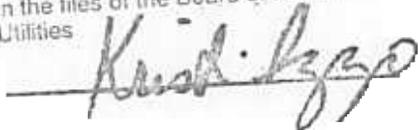
NICHOLAS ASSELTA  
COMMISSIONER

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 UNITED COMMUNITIES, LLC – EXEMPTION FROM  
UNDERGROUND EXTENSION REGULATIONS AT N.J.A.C. 14:3-8.4 AND  
EXCEPTION FROM RULES GOVERNING ENERGY STAR HOMES PROGRAM  
Docket No. EO09010039

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