

LAW OFFICE

USHER FOGEL
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January 30, 2013

Hon. Jeffrey C. Cohen
Acting Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 12-W-0137 - Joint Petition of Saratoga Water Services, Inc., and Malta Land Company, LLC for a Declaratory Ruling Concerning the Provision of Temporary Water Service to a Proposed Project in the Towns of Malta and Stillwater, Saratoga County

Dear Secretary Cohen:

Enclosed for filing with the Commission, please find the original of the Petition filed on behalf of Saratoga Water Services Inc., in the above-captioned matter.

Thank you for your assistance in this matter.

Respectfully submitted,

Saratoga Water Services, Inc.

By: 
Usher Fogel, Counsel

cc: Alexander Mackay (by electronic mail)

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 12-W-0137 - Joint Petition of Saratoga Water Services, Inc., and Malta Land Company, LLC for a Declaratory Ruling Concerning the Provision of Temporary Water Service to a Proposed Project in the Towns of Malta, Saratoga County

PETITION

1. Petitioner, Saratoga Water Service, Inc. (“Saratoga or “Company”) is a Transportation Corporation authorized to provide water service in the towns of Malta and Stillwater, Saratoga County, New York.
2. On March 23, 2012, Saratoga and Malta Land Company, LLC (“Malta Land”) filed a Joint Petition requesting that the Commission issue a Declaratory Ruling approving the Agreement for the Provision of Water Service between the parties entered into on March 14, 2012 (“Agreement”), authorizing the Company to provide water service to an existing commercial warehouse located in the Town of Malta, Saratoga County; waiving the existing Saratoga tariff provisions to the extent inconsistent with the Agreement; and waiving the applicability of 16 NYCRR §§501 and 502 regarding main extensions.
3. By *Declaratory Ruling on Provision of Water Service* issued June 20, 2012 (“Ruling”) the Commission found and declared that the Agreement is “reasonable and in the public interest” (Ruling, p. 2). A copy of the Ruling is attached as Exhibit “A”, hereto, and made a part hereof.

4. In connection with the request for waiver of the Company's inconsistent tariff provisions and the Commission's rule codified at 16 NYCRR §501 and 502 regarding main extensions, the Commission denied the request at this time. The Commission noted that pursuant to 16 NYCRR §501.10, a waiver of these rules is prohibited until the Company obtains the approval for the service area extension from the New York State Department of Environmental Conservation ("DEC"). The Commission directed that upon "obtaining the requisite approvals, Saratoga may reapply for a waiver", and shall identify the specific regulations in Parts 501 and 502 for which it seeks waivers and the reasons justifying such request (Ruling, p. 6).

5. On January 30, 2013, the DEC issued the requisite Permit under Article 15, Title 15 of the Environmental Conservation Law authorizing the provision of service by Saratoga to the Service Area Extension to Lakeview Landing Subdivision. A copy of DEC Permit No. 5-4140-00038/00025 (WSA#11,633) is annexed hereto as Exhibit "B", and made a part hereof. By this Permit, DEC affirmed the service area extension of Saratoga to provide water service under the Agreement.

6. In view of the foregoing approval by DEC, Saratoga hereby petitions and reapplies for a waiver of the Company's tariff provision that are inconsistent with the Agreement and the Commission's rules codified at 16 NYCRR § 501 and 502 dealing with main extension, and also requests that the Commission approve the terms and conditions of the Agreement

7. In its Ruling, the Commission directed that Saratoga may reapply for such a waiver and approval after approval of the service area extension was obtained from DEC. As this condition has been satisfied, granting of the request for waiver is entirely appropriate, and consistent with the Ruling.

8. Saratoga requests waiver of the following provisions of 16 NYCRR Part 501 and 502 based on the reason(s) noted below:

SWS seeks authorization to extend and provide service to an area lying *outside* of its approved service territory pursuant to a specific development plan as set forth in the Agreement. Under that Agreement, the Developer or Owner will install the water facilities within the new area in accordance with applicable rules at its own cost and expense, with none of that cost being shared with SWS' existing ratepayers. That development plan which is reviewed by the Department of Health and applicable municipal bodies will govern the manner by which the water facilities within the area will be constructed and installed. SWS task will only be to bring the water to that new area and related system.

Parts 501 and 502 are regulations that are applicable to a water corporation operating within its approved service territory (See, for example Part 501.1 (n) and 501.10). In this proceeding, SWS is seeking relief for an area lying outside of its approved service territory. Thus, as a general matter Parts 501 and 502 are not directly applicable.

SWS seeks specific waiver of Parts 501.3 and 501.4. These sections set forth specific sizes of main extensions. The system installation will be completed by the Developer or Owner as set forth in the Agreement at no cost to SWS or its ratepayers. Compliance with these sections would unnecessarily burden SWS and its ratepayers with any additional financial cost needed to achieve compliance with these regulations.

SWS seeks specific waiver of Part 501.2. This section establishes refunding obligations for SWS. The system installation will be completed by the Developer or Owner as set forth in the Agreement at no cost to SWS or its ratepayers. Compliance with this section would unnecessarily expose SWS and its ratepayers with any additional financial cost needed to achieve compliance with these refunding obligations.

SWS seeks specific waiver of Part 501.9. This section sets forth requirements dealing with line extension agreements. The instant request for Declaratory Ruling and the Commission's determination in this proceeding supplants the requirements of this section of the regulations.

9. Saratoga requests waiver of the following tariff provisions based on the reason(s) noted below:

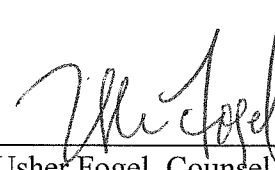
SWS seeks waiver of Section 11 of its Tariff (PSC No. 3, Original Leaf 40) dealing with main extensions. The Agreement and filings in this proceeding would govern the service extension process to an area outside of SWS's approved service territory.

10. As the Commission in its Ruling already determined that that the Agreement "is reasonable and in the public interest" and would not adversely impact on the environment, and DEC has provided approval to the service area extension, adoption of the relief sought in this petition would be in the public interest.

WHEREFORE, Petitioner respectfully requests that the Commission issue an order waiving the tariff provisions of Saratoga that are inconsistent with the Agreement and the main extension rules codified at 16 NYCRR §501 and 502, and also approve the terms and conditions of the "Agreement for the Provision of Water Service" between Saratoga and Malta Land dated March 14, 2012.

Respectfully submitted,

Saratoga Water Services, Inc.

By: 
Usher Fogel, Counsel

Dated: Cedarhurst, New York
January 30, 2013

ATTACHMENT "A"

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 14, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 12-W-0137 - Joint Petition of Saratoga Water Services, Inc.,
and Malta Land Company, LLC for a Declaratory
Ruling Concerning the Provision of Water Service to
a Proposed Project in the Town of Malta, Saratoga
County.

DECLARATORY RULING ON THE
PROVISION OF WATER SERVICE

(Issued and Effective June 20, 2012)

BY THE COMMISSION:

INTRODUCTION

On March 23, 2012, Saratoga Water Services, Inc. (Saratoga or the company)¹ and Malta Land Company, LLC (Malta Land) filed a joint petition requesting a declaratory ruling relating to an agreement, dated March 14, 2012, (Agreement) for Saratoga to extend water service outside its franchise area to serve a proposed 160-lot subdivision of residential properties known as Lakeview Landing (project) in the Town of Malta, Saratoga County. Specifically, the petitioners request that we issue a declaratory ruling finding that the terms of the Agreement and provision of water service under the Agreement are in the public interest.

¹ Saratoga Water Services, Inc. is a transportation corporation that provides general water service to 2,132 customers located in the Towns of Malta and Stillwater, Saratoga County.

The petitioners also seek a waiver of Saratoga's rates and service terms and conditions (tariff provisions) and applicability of Commission rules governing main extensions (16 NYCRR Part 501) and construction and maintenance of pipes (16 NYCRR Part 502)² to the extent they are inconsistent with the Agreement. Saratoga and Malta Land further request a determination that the Commission will approve the terms of the Agreement and grant the waivers when a future petition is submitted requesting these actions after the petitioners obtain the required governmental approvals.³

In this Declaratory Ruling, we find that the Agreement is reasonable and in the public interest. With respect to the waivers requested for its tariff provisions and Parts 501 and 502 of our rules, Saratoga is required to obtain Department of Environmental Conservation (DEC) approval before Commission consideration of this waiver request.

AGREEMENT FOR THE PROVISION OF WATER SERVICE

The Agreement states that the proposed project is located outside of and contiguous to Saratoga's service territory, as approved and authorized by the DEC and described in Saratoga's tariff schedule of water service rates, terms, and conditions. The Agreement provides that, although Saratoga is under no legal obligation to provide water service to customers residing outside of its approved service territory, the company is willing to extend its service territory, subject to the terms and conditions of the Agreement.

² Part 502 requires every water-works corporation to submit tariff amendments stating rules and regulations for construction and maintenance of service pipes, including minimum depth, minimum size, and location of connections.

³ This is not permissible because Saratoga is required to obtain Department of Environmental Conservation approval of the service area extension before the Commission issues its final approval (Public Service Law (PSL §89-c(1); 16 NYCRR §501.10).

Under the terms of the Agreement, Malta Land will pay all costs and associated charges arising out of the company's expansion of its approved service territory to include the proposed project, with no cost or charges assumed by the company and its ratepayers. Malta Land will construct, at its own cost and expense, all of the necessary water supply infrastructure within the project site, and the connection to Saratoga's system.⁴ The construction and installation of these facilities must conform to all applicable laws, rules and regulations, and is subject to the approval of Saratoga. Once constructed, Malta Land will convey the facilities to the company without compensation, and will pay Saratoga's standard tariff rates for water service.

The petitioners recognize that Saratoga may have to construct additional storage capacity⁵ to meet the expected, incremental demands on its entire system, including the relatively small demands associated with the subject proposed expansion of the company's service territory.⁶ Toward that end, the Agreement states that Malta Land will provide \$40,000 to Saratoga as a contribution to the company's costs of constructing the additional storage

⁴ Malta Land will construct a point of connection to the company's existing 10-inch water main, 3,800 lineal feet of new 10-inch and 12,400 lineal feet of new eight-inch water main, 22 shutoff valves, 25 fire hydrants, and 163 service connections.

⁵ The New York State Department of Health requires that the supplier of water provide storage capacity equal to the average daily consumption in the system. Based on current growth rates, Saratoga estimates that an additional storage tank with a capacity of 752,000 gallons will be required in approximately 10 years.

⁶ The company estimates the average daily consumption of the proposed service to be 40,000 gallons per day.

facilities.⁷ The company previously set up a Capital Savings Account for these contributions.

The Agreement is expressly contingent upon receipt of approval from all governmental authorities, including the Commission, DEC, DOH and the New York State Department of Transportation. Upon receipt of Commission approval, the Agreement provides that Saratoga will submit applications to DEC and DOH for approval of its extension of the service area.

JOINT PETITION

The petition asserts that the terms of the Agreement are in the public interest and provide an acceptable compromise between Malta Land's need to obtain water service for its proposed project and the interests of the company's ratepayers. Malta Land will construct at its own cost the necessary facilities to allow connection to Saratoga's water system and will contribute to the costs of installing the additional storage facilities needed to provide the water service. According to the petitioners, ratepayers will receive benefits as a result of Malta Land's contribution to Saratoga's fixed costs, without the risks or costs associated with expansion of facilities.

The petitioners seek waiver of the Commission's rules relating to main extensions and construction and maintenance of service pipes (16 NYCRR parts 501 and 502) in order to implement the terms of the Agreement. They seek a declaratory ruling from the Commission before obtaining DEC authorization because the ruling will authorize the company's assumption of the risks and burdens relating to expansion of its service territory upon the terms established in the Agreement. Saratoga and Malta Land explain that,

⁷ The company estimates that the cost of the additional storage tank will be equivalent to \$1.00 per gallon of storage capacity. The developer contribution represents the dollar amount needed to offset the cost of providing incremental storage capacity to meet the estimated average daily consumption of the proposed service territory expansion.

once DEC approves the application to extend service, Saratoga is committed to extending its service to the proposed project, subject to the terms and conditions governing water service established by the Commission, regardless of any inconsistency between the Agreement and Commission rules and requirements. Thus, they conclude, if the Commission were to subsequently reject any terms of the Agreement, Saratoga is still obligated to extend service under any requirements established by the Commission that differed from the terms of the Agreement.

Establishment of different terms, according to the petitioners, would place Saratoga in an untenable and unreasonable position, especially since its agreement to provide the water service solely as an accommodation to Malta Land is viewed by Malta Land as the most feasible and economic water supply option available.

The petition states that the interests of existing customers are fully protected under the terms and conditions of the Agreement, because existing customers will not have to pay any additional costs for the service extension. In addition, the petition states that the relief requested is consistent with previous Commission orders⁸ relating to extensions of water service by Saratoga outside of its service territory.

DISCUSSION AND CONCLUSION

We find and declare that the terms of the Agreement entered into between Saratoga and Malta Land on March 14, 2012 are reasonable, protect ratepayers, and in the public interest. The water service will provide a safe and reliable source of water for the proposed project. Saratoga's ratepayers will not assume any of the costs and associated charges related to the construction of

⁸ E.g., Case 07-W-0886, Saratoga Water Services and Visionary Park, LLC - Town of Malta Proposed Project, Declaratory Ruling on Provision of Water Service (issued January 23, 2008).

facilities and expansion of its approved service territory to serve the proposed project.

We deny the request for waiver of Parts 501 and 502 of the Commission's rules to the extent inconsistent with the terms of the Agreement. Commission rules⁹ state that a waiver of the main extension rules is prohibited until the company obtains approval for the service area extension from DEC and the affected town. Upon obtaining the requisite approvals, Saratoga may apply for a waiver. If it does so, it is required to state the specific regulations in Parts 501 and 502 for which it seeks waivers and the reasons justifying its request, as required by 16 NYCRR §501.10.

The Commission finds and declares:

1. The extension of water service to Malta Land Company, LLC under the terms of the Agreement is reasonable and in the public interest.
2. The request for a waiver of the tariff requirements and provisions of 16 NYCRR Parts 501 and 502 is denied as it cannot be considered until DEC approval is granted and Saratoga Water Services, Inc. identifies the specific regulations in Parts 501 and 502 for which it seeks waivers and the reasons for its request, as required by 16 NYCRR §501.10.
3. This proceeding is continued.

By the Commission,

Jaclyn A. Brillling
Digitally Signed by Secretary
New York Public Service Commission

(SIGNED)

JACLYN A. BRILLING
Secretary

⁹ 16 NYCRR §501.10.

ATTACHMENT “B”

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 5
232 Golf Course Road, Warrensburg, New York 12885
Phone: (518) 623-1281 • FAX: (518) 623-3603
Website: www.dec.ny.gov



January 30, 2013

Mr. Alexander L. Mackay
Saratoga Water Services, Inc.
P.O. Box 2109
Ballston Spa, NY 12020

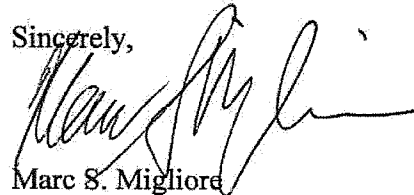
RE: Saratoga Water Services, Inc.
Service Area Extension to Lakeview Landing Subdivision
Town of Malta, Saratoga County
DEC Permit # 5-4140-00038/00025 (WSA # 11,633)

Dear Mr. Mackay:

Enclosed is the DEC Water Supply permit for the above project, issued in accordance with the applicable provisions of the Environmental Conservation Law.

If you have questions regarding the terms and conditions of the permit, please call Robert Streeter of our Division of Water at 623-1221. Thank you.

Sincerely,



Marc S. Migliore
Deputy Regional Permit Administrator

Enclosure

c: Robert Streeter, Water
Michael Holt, Water - Albany (3508)

ec: Michael Harrington & Nick Green, Lamont Engineers
David Phillips, NYS DOH - Albany
Kristine Wheeler & Aaron Koonsman, NYS DOH - Glens Falls District
Robert Swider, NYS DOH - Capital Region
Michael Twergo & Claude Semexant, NYS Dept. of Public Service



PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:

SARATOGA WATER SERVICES INC
PO BOX 2109
BALLSTON SPA, NY 12020-8109
(518) 899-6001

Facility:

SARATOGA WATER SERVICES INC
PLAINS RD - KNAPP RD - US RTE 9
MALTA, NY

Facility Location: in MALTA in SARATOGA COUNTY

Facility Principal Reference Point: NYTM-E: 599.502 NYTM-N: 4758.464
Latitude: 42°58'20.4" Longitude: 73°46'47.3"

Project Location: NYS Route 9P, 0.6 mile east of US Route 9, Town of Malta

Authorized Activity: WSA# 11,633 - This permit authorizes Saratoga Water Services, Inc. to expand its approved service area to include the Lakeview Landing Subdivision in the Town of Malta, Saratoga County. This permit will involve the additional taking of up to 80,000 gallons per day from existing sources of Saratoga Water Services, Inc., to serve 160 single family homes. This project will involve the installation of approximately 6,325 linear feet of 10-inch water main, 9,545 linear feet of 8-inch water main and related appurtenances.

With this permit, Saratoga Water Services, Inc. has the following sources:

<u>Source Name</u>	<u>Approved Taking</u>
Knapp Road Wellfield	342 gallons per minute
Cold Spring Well No. 7	471 gallons per minute
Cold Spring Well No. 8	1,260 gallons per minute
Cold Spring Well No. 9	1,400 gallons per minute

Permit Authorizations

Water Supply - Under Article 15, Title 15

Permit ID 5-4140-00038/00025

(WSA No. 11,633)

New Permit

Effective Date: 1/30/2013

Expiration Date: 1/29/2023

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.



Permit Administrator: MARC S MIGLIORE, Deputy Regional Permit Administrator
Address: REGION 5 WARRENSBURG SUB-OFFICE
232 GOLF COURSE RD
WARRENSBURG, NY 12885

Authorized Signature: _____

Date 1,30,2013

Permit Components

WATER SUPPLY PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

WATER SUPPLY PERMIT CONDITIONS

1. Submission of Plans and Specifications Prior to starting new work on any construction authorized herein, detailed plans of the structures proposed to be built and specifications for such work shall have been submitted to and approved by the Department. Thereafter such construction work shall be entirely completed in full accordance with the plans and specifications which have been submitted and approved. **Note:** Approval by this Department of final plans and specifications, and of completed works, will not be issued until equivalent approvals have been issued by the NYS Department of Health.

2. Final Approval of Work Section 15-1529 of the Environmental Conservation Law forbids the operation of any of these works until, as constructed, they have been approved by the Department. Such final approval will be given only on written request. In general, such approval will not be given until all provisions affecting quality of the water and safety of the works have been complied with in full.

3. Right to Rescind The Department reserves the right to rescind this permit or to take whatever action it may deem suitable and proper if the works authorized to be constructed herein are not initiated by February 1, 2014.

4. Transfer of Ownership of Water Supply Systems A new water supply permit application is required for the acquisition or condemnation of an existing water supply system.

5. No Distribution Beyond District Without Approval Nothing contained herein shall authorize the permittee to distribute water to any other district or service area that has not already been approved by the Department or its predecessors without first obtaining a further permit from the Department.

6. Approved Water Supply Service Area The approved water service area of the Saratoga Water Services, Inc. is shown on a map submitted with this application entitled, Proposed Cluster Subdivision, Lakeview Landings, by Environmental Design Partnership, LLP and dated November 6, 2012.



7. Minimize Erosion During any construction directly or indirectly associated with the activities authorized herein, the permittee shall make provisions to minimize erosion on the construction site and to prevent increased sedimentation in any water body on or adjacent to the site.

8. Disinfection of Water Mains The permittee shall ensure that water used for disinfecting water mains, if discharged to area streams, has a free chlorine residual not exceeding 0.05 milligrams per liter (mg/l) at the point of discharge.

9. Protection of Facilities from Floods The permittee shall ensure that all new construction directly related to this authorization complies with the standards imposed by the MALTA under provisions of the National Flood Insurance Program (NFIP).

10. Meters Required on All Sources and Customers The permittee must maintain meters on all sources of supply used in the system and on all customer service connections supplied by the system.

11. Meter Calibration for Privately Owned Systems The permittee must periodically calibrate all of its water meters, including source meters, in accordance with applicable regulations of the NYS Public Service Commission (16 NYCRR, Part 500).

12. Leak Detection and Repair Program The permittee must develop and implement a leak detection and repair program that uses sonic detection equipment to inspect its entire distribution system in a systematic fashion. At a minimum, this program must cover the entire system in a three-year cycle by inspecting at least one-third of the system each year. Whenever two consecutive annual water audits show that unaccounted-for water is 15% or less of system production, the leak detection and repair program may be modified to cover the entire system in a longer cycle.

13. Conduct Water Audits The permittee must maintain records of annual metered water production and consumption, and, at least once annually, must conduct a system water audit that utilizes metered production and consumption data to determine unaccounted-for water.

14. Permittee Must Maintain Records The permittee must retain records of production and consumption, reports of audit results, and summaries of leaks detected and repaired for at least ten years. The permittee must provide copies of such of these records, reports, and summaries as might be requested in writing by the Department within one month of receiving such a request.

15. Annual Water Use Reporting Required The permittee must submit annual reports of actual water usage to

NYS Department of Environmental Conservation
Division of Water, Bureau of Water Resource Management
625 Broadway
Albany, NY 12233-3508
518-402-8182

in accordance with Environmental Conservation Law Article 15, Title 33: Water Withdrawal Reporting. These reports shall be made on the forms and within the time frames specified on the Department's webpage located at: <http://www.dec.ny.gov/lands/55509.html>.



GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
REGION 5 WARRENSBURG SUB-OFFICE
232 GOLF COURSE RD
WARRENSBURG, NY12885

4. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any



provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

5. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

- ☐ A public hearing is required by law and is scheduled below.
☐ A public hearing is not required by law, but is scheduled below.

Time: *Date:* *Location:*

_____	_____	_____
_____	_____	_____
_____	_____	_____

6. *Interpreter services (check only if a public hearing is scheduled):*
☐ Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.
7. *Accessibility (check appropriate box only if a public hearing is scheduled):*
☐ All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.
☐ Attached is list of public hearing locations that are not reasonably accessible to persons with a mobility impairment. An optional explanation is submitted regarding the nonaccessibility of one or more hearing sites.
8. *Terms of rule (SELECT ONE SECTION):*
A. ☐ The full text of the rule is attached since it is under 2,000 words.
B. ☐ A summary of the rule is attached since the full text of the rule is over 2,000 words.
☐ Full text is posted at the following State website: _____
☐ Full text is not posted on a State website.
☐ Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA §102(2)(a)(ii).
C. ☐ Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].
9. *The text of the rule and any required statements and analyses may be obtained from:*
Agency contact _____
Agency Name _____
Office address _____
Telephone _____ E-mail: _____
10. *Submit data, views or arguments to (complete only if different than previously named agency contact):*
Agency contact _____
Agency Name _____
Office address _____
Telephone _____ E-mail: _____

Notice of Proposed Rule Making

Submitting Agency

TEXT/SUBSTANCE AND ATTACHMENTS SUBMITTED: ☐ E-MAIL (nysregister@dos.state.ny.us)
☐ DISK

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms and nonscannable text attachments will be cause for rejection of this notice.

1. A. ☒ *Proposed action:* Saratoga Water Services, Inc. and Thomas P. Deveno and Thomas J. Farone have petitioned the Commission for the issuance of a Declaratory Ruling regarding the provision of water service
- B. ☐ This is a consensus rule making. A statement is attached setting forth agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. ☐ This rule was previously proposed as a consensus rule making under I.D. No. _____. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. ☐ This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).
2. *Statutory authority under which the rule is proposed:* Public Service Law, Section 4 (1), 20 (1) and 89-b
3. *Subject of the rule:* The subject of the proposed rule whether a proposed agreement for the provision of water service by Saratoga Water Services to a development in the Town of Malta, Saratoga County is in the public interest.
4. *Purpose of the rule:* The purpose of the proposed rule is whether the Commission should issue a declaratory ruling regarding the provision of water service.
5. *Public hearings* (check box and complete as applicable):
☐ A public hearing is not scheduled. (SKIP TO ITEM 8)

11. *Public comment will be received until:*
- ☐ 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it is under 2000 words or full text of rule has been posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making].
- ☐ 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is been posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making].
- ☐ 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or full text is not posted on a State website or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making].
- ☐ Other: (*specify*) _____
12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.
13. *Expiration date* (check only if applicable):
- ☐ This proposal will not expire in 365 days because it is for a “rate making” as defined in SAPA §102(2)(a)(ii).
14. *Additional matter required by statute:*
- ☐ Yes (include material required by statute).
- ☐ No additional material required by statute.
15. **Regulatory Agenda** (The **Division of Housing and Community Renewal; Workers’ compensation Board**; and the departments of **Agriculture and Markets, Banking, Education, Environmental Conservation, Family Assistance, Health, Insurance, Labor, Motor Vehicles and State** and other department specified by the Governor or his designee *must complete this item*. If your agency has an optional agenda published, that should also be indicated below):
- ☐ This action was a Regulatory Agenda item in the first January issue of the _____ (year) *Register*.
- ☐ This action was a Regulatory Agenda item in the last June issue of the _____ (year) *Register*.
- ☐ This action was not under consideration at the time this agency’s Regulatory Agenda was submitted for publication in the *Register*.
- ☐ Not applicable.
16. **5-Year Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

- ☐ Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a decision of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
- ☐ Attached is an assessment of public comments received by the agency in response to the listing of the rule in the regulatory agenda.
- ☐ As assessment of public comments is not attached because no comments were received.
- ☐ Not applicable.

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

- A. The attached RIS contains:
 - ☐ The full text of the RIS.
 - ☐ A summary of the RIS.
 - ☐ A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.
- B. A RIS **is not attached**, because this rule is:
 - ☐ subject to a consolidated RIS printed in the *Register* under I.D. No. _____; issue date: _____.
 - ☐ exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - ☐ exempt, as defined in SAPA §102(11) [Consensus Rule Making].
- C. **A statement is attached** claiming exemption pursuant to SAPA 202-a (technical amendment).

18. **Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached RFA contains:
 - ☐ The full text of the RFA.
 - ☐ A summary of the RFA.
 - ☐ A consolidated RFA, because this rule is one of a series of closely related rules.
- B. ☐ **A statement is attached** explaining why a RFA not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon

which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

- C. A RFA is **not attached**, because this rule:
- ☐ is subject to a consolidated RFA printed in the *Register* under I.D. No. _____; issue date: _____.
 - ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - ☐ is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. ***Rural Area Flexibility Analysis (RAFA)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached RAFA contains:
- ☐ The full text of the RAFA.
 - ☐ A summary of the RAFA.
 - ☐ A consolidated RAFA, because this rule is one of a series of closely related rules.
- B. ☐ A **statement is attached** explaining why a RAFA not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.
- C. A RAFA is **not attached**, because this rule:
- ☐ is subject to a consolidated RAFA printed in the *Register* under I.D. No. _____; issue date: _____.
 - ☐ is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - ☐ is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. ***Job Impact Statement (JIS)***
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- A. The attached JIS contains:
- ☐ The full text of the JIS.
 - ☐ A summary of the JIS.
 - ☐ A consolidated JIS, because this rule is one of a series of closely related rules.
- B. ☐ A **statement is attached** explaining why a JIS not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon

which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.
[] A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

- C. A JIS is **not attached**, because this rule:
- [] is subject to a consolidated JIS printed in the *Register* under I.D. No. _____; issue date: _____.
 - [] is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].
 - [] is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name _____ Signature _____

Address _____

Telephone _____ E-Mail _____

Date _____

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. **Collate the original notice and attachments** as: (1) from; (2) text or summary of rule; and, ***if any***, (3) regulatory impact statement, (4) regulatory flexibility analysis for small businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement. Submit the originals, as collected and **ONE copy of that collated set**.
3. **Mail or hand deliver hard copy of rule making package to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001.
4. **E-mail text/substance and attachments to:** nysregister@dos.state.ny.us or attach a disk containing the text/substance and required material.

Summary of Proposed Rule

The Commission is considering a Petition in which Saratoga Water Services, Inc. (“Saratoga”) and Malta land Company, LLC seek issuance of a Declaratory Ruling finding and declaring that :

(a) the terms and conditions of a certain “Agreement For The Provision of Water Service”, dated March 14, 2012 (“Agreement”) are in the public interest; (b) that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement, would serve the public interest; (c) that waiving Saratoga’s tariff provisions to the extent they are inconsistent with the terms of said Agreement, would be justified and consistent with the public interest; (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502, to the extent they are inconsistent with the Agreement, would be justified and consistent with the public interest; and (e) that approval of the terms of the Agreement and issuance of the requested waivers, would be granted at such time when an application for such relief is presented to the Commission after all required governmental approvals have been issued.