

NEW YORK STATE  
PUBLIC SERVICE COMMISSION

CASE 05-M-0073 - Petition of M-GBC, LLC, for (1) a Certificate of Public Convenience and Necessity to Own, Operate and Maintain Existing Steam Plant, Electric Substation and Sprinkler Water Services Pursuant to the Public Service Law, (2) a Declaratory Ruling that it will be Subject Only to Lightened Regulation, (3) approval of Tariff for Steam Service, and (4) an Expedited Hearing.

CASE 05-S-0074 - New Tariff Schedule, PSC No. 1, for Steam Service in Calverton Industrial Park, filed by M-GBC, LLC.

PROCEDURAL RULING

(Issued September 9, 2005)

MICHELLE L. PHILLIPS, Administrative Law Judge  
JEFFREY E. STOCKHOLM, Administrative Law Judge

By September 7, 2005, the parties' prefiled testimony had been submitted on steam issues. The submissions, however, appear to lack information that may be critical to addressing the steam issues which are set for hearing on September 26, 2005.<sup>1</sup> To ensure that a complete record is provided for the Commission in this proceeding, we hereby request that counsel for M-GBC, LLC, the Calverton Owners Association and New York State Department of Public Service Staff file briefs that respond to the following questions:

1) Has the petitioner received the consent of the proper municipal authorities, as required by Public Service Law §81? If not, why not?

2) Is the petitioner's exercise of the right, privilege or franchise to provide steam service "necessary" (Public Service Law §81), particularly in light of the testimony on need that was submitted in this proceeding?

3) Is the petitioner's exercise of the right, privilege or franchise to provide steam service "convenient" (Public

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<sup>1</sup> Notice of Evidentiary Hearing (issued September 7, 2005).

Service Law §81), particularly in light of the testimony that was submitted in this proceeding?

4) Does any portion of the steam plant that is owned operated or managed by the petitioner lie, wholly or partly, in a public street?

5) If the petitioner is not a transportation corporation under the Transportation Corporations Law, can a certificate be issued pursuant to Public Service Law §81?

6) Does the petitioner's Certificate of Incorporation include a statement of its corporate purposes, which specifically includes providing steam service?<sup>2</sup> If not, is the provision of steam service by petitioner *ultra vires*?

7) Have the steam consumers explored the feasibility of forming a district heating and cooling cooperative corporation? (see Legislative Findings, Transportation Corporations Law, §112).

8) Does the Commission have jurisdiction to set steam rates, whether temporary or permanent, for an entity that does not have a certificate of public convenience and necessity to provide steam service?

The briefs are to be served by 5 p.m., September 22, 2005, in accordance with the Commission's rules (16 NYCRR §§3.5, 4.8).

(SIGNED)

MICHELLE L. PHILLIPS

(SIGNED)

JEFFREY E. STOCKHOLM

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<sup>2</sup> The Petitioner shall provide a copy of the purposes for which the corporation was created as filed with the New York Secretary of State.