

Filed Session of April 18, 2013
Approved as Recommended
and so Ordered
by the Commission

JEFFREY C. COHEN
Acting Secretary

Issued and Effective April 24, 2013

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

March 19, 2013

TO: THE COMMISSION

FROM: OFFICE OF ELECTRIC, GAS AND WATER -
Tariff, Electric Supply and Small Utility Rates

OFFICE OF ENERGY EFFICIENCY AND THE ENVIRONMENT -
Renewable Energy & Environmental Compliance Section

SUBJECT: 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 Proposed Project in the Town of Malta,
Saratoga County.
AMENDED PETITION

SAPA: 12-W-0137SP1 - Published in State Register on
April 25, 2012.

SUMMARY OF

RECOMMENDATIONS: The Agreement submitted by Saratoga Water
Services, Inc. and Malta Land Company, LLC, and
the request for waiver of certain tariff
provisions and certain provisions of 16 NYCRR
§501, should be approved.

BACKGROUND

On March 23, 2012, Saratoga Water Services, Inc.
(Saratoga Water or the company) 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 located in the Town of Malta (Town), Saratoga County. Saratoga Water also requested a waiver of its existing tariff provisions to the extent they were inconsistent with the Agreement, and a waiver of the applicability of certain provisions of 16 NYCRR §501 regarding main extensions.

In a Declaratory Ruling issued on June 20, 2012, the Commission found and declared, based on the facts contained in the joint petition, that the Agreement between Saratoga Water and Malta Land was reasonable and in the public interest.¹ However, the request for waiver of tariff provisions inconsistent with the Agreement was considered premature, primarily because the New York State (NYS) Department of Environmental Conservation (DEC) had not issued a water supply permit to Saratoga Water for the expansion of its service territory. The Commission, therefore, denied the request without prejudice and Saratoga Water was advised to refile after obtaining the requisite approval.

On January 30, 2013, the DEC issued the water supply permit to Saratoga Water,² and by amended petition filed on January 30, 2013 and modified on March 15, 2013, the company now renews its request for approval of the Agreement and waiver of the main extension regulations.

WAIVER OF TARIFF PROVISIONS AND RULES REGARDING MAIN EXTENSIONS

Since the Agreement and filings in this proceeding would govern the service extension process to an area outside of

¹ Case 12-W-0137, Saratoga Water Services, Inc. et al. - Declaratory Ruling, Declaratory Ruling on Provision of Water Service (issued June 20, 2012).

² Permit No. 5-4140-00038/00025, WSA No. 11,633

the company's approved service territory, Saratoga Water seeks a waiver of Section XI(1) of its Tariff (PSC No. 3, Original Leaf 44) dealing with main extensions.

Saratoga Water further seeks a waiver of certain provisions of 16 NYCRR §501 regarding main extensions that are applicable to a water corporation operating within its approved service territory. More specifically, Saratoga Water seeks waiver of 16 NYCRR §501.2, §501.3, and §501.4. These sections set forth installation requirements, specific distances of main extensions, and/or refunding obligations. The system installation will be completed by Malta Land as set forth in the Agreement at no cost to Saratoga Water or its ratepayers.³ The company states that compliance with these sections would unnecessarily burden Saratoga Water and its ratepayers with additional financial cost needed to achieve compliance with these regulations, installation requirements and/or refunding obligations.

Saratoga Water also seeks specific waiver of §501.9. This section sets forth the filling requirements dealing with main extension agreements. The company states that its request for Declaratory Ruling and the Commission's determination in this proceeding supplants the requirements of this section of the regulations.

ENVIRONMENTAL QUALITY REVIEW

Under the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law, and

³ In this case, Malta Land has agreed to pay the entire cost of the water facilities necessary to connect to Saratoga's system and upon completion of the facilities, will transfer them to the company at no cost. Malta Land will also contribute \$40,000 toward the cost of constructing additional storage facilities that may become necessary as a result of the proposed expansion of the company's service territory.

its implementing regulations, (6 NYCRR §617 and 16 NYCRR §7), all State agencies must determine whether the actions they are requested to approve may have a significant impact on the environment. Other than our approval of the action proposed here, no additional State or local permits or approvals are required, and so a coordinated review under SEQRA is not needed. We will assume Lead Agency Status under SEQRA and conduct an environmental assessment.

SEQRA [6 NYCRR §617.6(a)(3)] requires applicants to submit a completed environmental assessment form (EAF) describing and disclosing the likely impacts of the proposed actions. Petitioner submitted a Part I EAF long-form.

The proposed action is a request for approval of the joint petition of Saratoga Water and Malta Land for Saratoga Water to extend water service outside its franchise area to serve a proposed 160-lot subdivision of single family homes known as Lakeview Landing (project). The project totals 345 acres with 254 acres on the north side and 88 acres on the south side of NY Route 9P. A 10-inch polyvinyl chloride (PVC) supply line will connect to an existing main at the intersection of NY Route 9P and Stewart Lane and extend approximately 2,700 feet on the north side of NY Route 9P to the subdivision. There will be 10-inch and 8-inch PVC water supply lines installed in the subdivision.

The Town undertook a SEQRA review and granted approval of the Lakeview Landing Major Subdivision on December 20, 2011. The DEC approved the expansion of the Saratoga Water service territory on January 30, 2013. The DEC's SEQRA review of the service territory expansion is based upon the project review undertaken by the local municipality.

Department of Public Service Staff (Staff) reviewed the site plans and made a field review. Saratoga Water proposes

to install the supply line along the previously disturbed northerly NY Route 9P highway shoulder. The construction drawings show asphalt driveways, street trees, shrubs, fences, road signage, utility poles and guy wires in the construction path. Staff inquired of Saratoga Water what measures would be taken during pipe installation to minimize or protect these trees, lawns, drives, and street fixtures. In a letter dated February 20, 2013, Saratoga Water stated that no construction activity shall take place beyond the pipeline easement boundary. The pipeline contractor shall restore lawns, driveways, sidewalks and fences to a condition as good as before the disturbance. Mailboxes will be protected or removed and replaced exactly as before being disturbed. Trees, shrubs and hedges will be protected or removed, placed in temporary storage and replanted upon completion of the pipeline construction. Any damaged plant material shall be replaced at the contractor's expense.

Staff believes the requirements for impact mitigation and site restoration are sufficient to mitigate the potential adverse impacts upon the environment.

The proposed action before the Commission does not meet the definition of the Type 1 or Type 2 actions contained in 6 NYCRR §617.4, §617.5 and 16 NYCRR §7.2, so it is classified as an "unlisted" action for the SEQRA review purposes.⁴ Staff concludes, based upon the criteria for determining significance listed in 6 NYCRR §617.7(c) that the action proposed in the petition will not have significant adverse physical impacts upon the environment and adopt a negative declaration pursuant to SEQRA.⁵ Because no adverse environmental impacts were found, no

⁴ 6 NYCRR §617.2(ak)

⁵ 6 NYCRR §617.12.

Public Notice Requesting Comments is required or will be issued. A Notice of Determination of Non-Significance for this unlisted action is attached. The completed EAF will be retained in our files.

DISCUSSION AND CONCLUSION

The Commission has, on occasion, waived main extension regulations when such waivers were in the public interest.⁶ In this instance, the Commission, by Declaratory Ruling, has determined that the Agreement is in the public interest. Now that the DEC has approved the company's expansion of its service territory, Saratoga Water's amended petition requesting approval of the Agreement and waiver of certain of the company's tariff provisions and Commission's rules regarding main extensions should be approved.

RECOMMENDATION

It is recommended that:

1. The amended petition and related Agreement submitted by Saratoga Water Services, Inc. and Malta Land Company, LLC be approved as they are in the public interest.
2. The company's request for waiver of Section XI (1) of its Tariff (PSC No. 3, Original Leaf 44) and waiver of 16 NYCRR §501.2, §501.3, §501.4 and §501.9, be approved; and
3. Case 12-W-0137 be closed.

⁶ See Case 06-W-0943, Saratoga Water Services, Inc. et al. - Declaratory Ruling, Order Waving Tariff Provisions and Main Extension Regulations (issued July 6, 2009).

Respectfully submitted,

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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 Water Service to proposed Project in the Town of Malta, and Stillwater, Saratoga County.

NOTICE OF DETERMINATION
OF NON-SIGNIFICANCE

NOTICE is hereby given that an Environmental Impact Statement will not be prepared in connection with the approval by the Public Service Commission, for the provision of approval of water service to the Lakeview Landing Subdivision in the Town of Malta, Saratoga County, New York that will result in no significant adverse physical impacts upon the environment based upon our determination, in accordance with Article 8 of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The exercise of this approval is an Unlisted Action as defined in 6 NYCRR Section 617.7(c).

The address of the Public Service Commission, the lead agency for the purposes of the Environmental Quality Review of this project is Three Empire State Plaza, Albany, New York 12223-1350. Questions may be directed to Richard H. Powell at (518) 486-2885 or to the address above.

Jeffrey C. Cohen
Acting Secretary