

05 11 0075, corresp
08/22/08

LAW OFFICES
BERKMAN, HENOCH, PETERSON & PEDDY, P.C.

100 GARDEN CITY PLAZA, GARDEN CITY, NY 11530

TELEPHONE: (516) 222-6200

FACSIMILE: (516) 222-6209

E MAIL: thefirm@bhpp.com

WEBSITE: www.bhpp.com

GILBERT HENOCH
KENNETH S. BERKMAN (1958* 2007)
STEVEN J. PEDDY
GARY H. FRIEDENBERG
RONALD M. TERENZI
MIRIAM R. MILGROM
STEPHEN J. BROOKMEYER
LISA M. CONFUSIONE
JOSEPH E. MACY
GREGORY P. PETERSON
PETER P. PETERSON (1936*-2001)
LESLIE R. BENNETT

BRUCE J. BERGMAN
STEVEN BROCK
JAMES ESPOSITO
VINSON J. FRIEDMAN
MURRAY GOLDBERG
DAVID R. KAY
STANLEY MISHKIN
TODD C. STECKLER
JEFFREY M. STEIN
JACK M. STEINGART
PETER SULLIVAN

SARA Z. BORISKIN
ROBERT A. CARRUBA
HENRY P. DISTEFANO
GENA GOLDBERGER
CARA M. GOLDSTEIN
RAVISHARON KHUNKHUN
RUDOLF J. KARVAY

ADAM S. KALB
BRUCE D. MAEL
MARIANNA OSWALD
ANDREW M. ROTH
NICOLE E. SCHIAVO
CHRISTOPHER F. ULTO

*ADMITTED

COUNSEL:

JAMES M. PEDOWITZ
JOSEPH N. MONDELLO
LEONARD S. ELMAN
ROBERT T. BLOOM
MARK WEPRIN
HARVEY BRUCE BESUNDER

WRITER'S DIRECT DIAL

September 25, 2008

VIA FEDERAL EXPRESS

Jaclyn A. Brillig
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

2008 SEP 25 AM 10: 05

Re: Case 05-M-0073 & Case 05-S-0074
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

Dear Ms. Brillig:

Enclosed for filing are an original and five copies of the Statement of Todd Steckler Pursuant to Public Service Commission Order Issued November 4, 2005 on behalf of the Petitioner M-GBC, LLC in the above-referenced proceedings. Copies have been sent to the Administrative Law Judges and to the active parties.

Thank you for your attention to this matter.

Sincerely,

Todd Steckler
Todd C. Steckler

TCS:rn
Encls.

cc: Administrative Law Judge Michelle L. Phillips
Administrative Law Judge Jeffrey E. Stockholm
Leonard Van Ryn, Esq.
Perry & Campanelli, LLP

ORIGINAL

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

**STATEMENT OF TODD STECKLER PURSUANT TO
PUBLIC SERVICE COMMISSION ORDER ISSUED NOVEMBER 4, 2005**

TODD C. STECKLER, being duly sworn, deposes and says:

1. I am a member of Berkman, Henoch, Peterson & Peddy, P.C., attorneys for M-GBC, LLC ("M-GBC"), the petitioner in the above-entitled proceeding.
 2. I make this statement pursuant to the Order issued by the Public Service Commission on November 4, 2005, which requires the submission of various compliance filings after the happening of specified events, including the transfer of the electric facility and responsibility for electric service to the Long Island Power Authority and the installation of individual fire suppression systems by the remaining users of non-potable water supplied by M-GBC.
 3. The electric plant was transferred to the Long Island Power Authority on June 13, 2007, and from that date forward M-GBC has not supplied any of the property owners in the Calverton Industrial Park with electric service.
 4. With respect to the sole remaining issue, the non-potable sprinkler water service, since the issuance of the November 4 order, each of the individual property owners has refused to install an individual stand-alone fire suppression systems in direct contradiction to the position taken by Association during the course of the proceedings before the Commission, wherein it was agreed that individual fire suppression systems would be installed (or that the existing fire suppression system would be connected to the Riverhead Water District system) at each of the premises, at which time M-GBC would cease to operate the central non-potable water system.
-

5. Not only is this position inconsistent with the representations of the Association to the PSC, the November 5 order specifically states: **"this order will establish procedures designed to confirm that M-GBC ceases its provision of utility services and abandons, transfers or decommissions any utility plant that might otherwise be subject to Commission jurisdiction."** Yet, notwithstanding the Association's participation in and consent to the November 5 order and the proceedings leading to its issuance, the members of the Association have actually commenced a lawsuit seeking to enjoin M-GBC from terminating the non-potable water service, thereby attempting to make a mockery of the PSC proceedings. A brief review of the history of this matter is instructive.

6. M-GBC commenced the proceedings before the PSC seeking to have a rate set for the steam heat service it was providing to three premises. At that time, M-GBC also asked for a certificate of public convenience and necessity for both the electric system and the non-potable water system, in such as was necessary. It was and has always been M-GBC's position that the non-potable water system was not subject to PSC jurisdiction.

7. The consistent position of the Association before the PSC that M-GBC would cease providing non-potable water was first expressed during the March 14, 2005 pre-hearing conference, where Andrew Campanelli appeared on behalf of all members of the Association. During the proceedings, Mr. Campanelli stated:

With regard to the substation that was supposed to be turned over to LIPA, that was one of the stipulations. Unfortunately, LIPA will not take that over without the permission of the town. The town will not grant permission until Mr. Burman applies for the subdivision.

The same applies to water. The water wells are owned by the water district. The water billing system is ready to be taken over by the water district. Mr. Burman has said that he will consent to the taking over by the water district. Unfortunately, the water district will not take over the water system unless and until he applies for a subdivision.

8. Thereafter a telephone conference was held on June 30, 2005, which was followed by a procedural ruling dated July 1, 2005 which provided:

With respect to the electric and sprinkler water service, M-GBC and the Association declared that once necessary easements were approved, Long Island Power Authority would provide electric service and the Riverhead Water District would provide sprinkler water service.

9. Accordingly, as of July 1, 2005, it was clearly understood that once the Riverhead Water District was providing sprinkler water service, M-GBC would no longer have any obligation

to operate the central non-potable water system. **Each of the properties owned by members of the Association is currently connected to the Riverhead Water District water system and has been connected since before the commencement of these proceedings before the PSC.**

10. Several months later, after the Association had by stipulation consented to the withdrawal of M-GBC's petition before the PSC, an evidentiary hearing was held on September 30, 2005. During the September 30 hearing -- at which the Association was represented by counsel -- it was represented by M-GBC and specifically agreed to by the Association that M-GBC would cease providing the non-potable water to the fire suppression system, that the individual property owners would install individual fire suppression systems and that M-GBC would decommission the system entirely.

11. The parties' agreements during the September 30 hearing were then set forth in the Commission's Order of November 5, 2005, which provides:

When questioned about the status of M-GBC's existing water plant and non-potable sprinkler water service, M-GBC counsel reported that individual, on premises fire suppression facilities will be installed. M-GBC's counsel further reported that, once said service was no longer needed, M-GBC would abandon said service and the associated plant.

12. The November 5 Order further provided that M-GBC would notify the Commission when "all remaining users of non-potable water service have installed individual fire suppression facilities." No objection or complaint was heard from the Association concerning their installation of individual fire suppression systems or the termination of the central non-potable water supply by M-GBC upon the installation of such systems.

13. Now, almost three years later, the property owners have still not installed stand-alone systems or hooked up to the Riverhead Water District system, even though (i) every individual property is connected to the Riverhead Water District water supply, (ii) M-GBC had given each owner until December 31, 2006 before the non-potable water supply would be terminated and (iii) the New York Supreme Court -- as discussed fully below -- gave the members of the Association (six months) until February 25, 2007 to connect to the Water District's system before M-GBC would have the right to terminate the non-potable water supply.

14. In essence, the Association -- by its actions in refusing to install individual systems or connect to the Riverhead water system -- is asking the Commission to reinstate this proceeding, since without this proceeding and the imprimatur of the Commission, there is no basis for the M-GBC to provide any water service.

15. As recognized by Judge Sgroi in the Supreme Court action pending in Suffolk County (in which the property owners seek a permanent injunction preventing M-GBC from terminating the non-potable water): "Since the Plaintiffs [the Association] are only entitled under their contractual agreement to water and electricity being provided at rates comparable to the public utilities, M-GBC

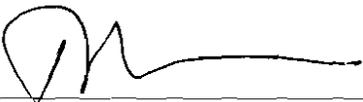
would not be in violation of its contractual agreements if it connected the Plaintiffs to those utilities and then discontinued providing those services privately to the Plaintiffs." As noted above, all the property owners in the subdivision are already connected to the Riverhead Water District water system, which supplies each of the premises with potable water adequate to service any fire suppression needs. As recognized by the Court, the fact that the members of the Association have voluntarily chosen not to connect their fire suppression systems to the Riverhead Water District system does not prevent M-GBC from terminating the non-potable water supply.

16. In granting the injunction, the Court did not question that M-GBC had the right to terminate the non-potable water supply, but rather recognized that "It is clear, from these submissions, that the Plaintiffs will suffer irreparable harm if M-GBC is permitted to discontinue service of the high pressure water **without allowing the time to install separate fire suppression systems.**" The Court then gave the individual property owners six months to install their systems -- they have done nothing.

17. Moreover, the Association, before this Commission, specifically represented that upon connection of their premises to the Riverhead Water District water system, M-GBC would be able to discontinue the centralized non-potable water service. M-GBC arranged for the connection to the Riverhead Water District system and must now be permitted to cease providing non-potable water from wells it no longer owns through a system it is not authorized to operate.

18. In sum, that the individual members of the Association have voluntarily chosen not to connect their fire suppression systems to the Riverhead Water District system (after being given almost two years by M-GBC, an additional six months by the Court and more than a year thereafter) has nothing whatsoever to do with M-GBC and there is no reason to hold M-GBC hostage to the Association's unreasonable conduct which directly contradicts their agreements before this Commission.

19. Accordingly, M-GBC hereby requests that the Commission's order of November 5, 2005 be modified to provide that M-GBC must cease all operation of any water service (including the provision of non-potable water to the individual property owners) within six months from the date of the revised order, so as to permit the individual property owners sufficient time to connect their fire suppression systems to the Riverhead Water District's water system, as contemplated by the November 4 order and agreed to by the property owners during the PSC proceedings.



TODD C. STECKLER

Sworn to before me this
25th day of September, 2008



Notary Public

TERESE ANNE KEARN
Notary Public, State of New York
No. 01KE4682638
Qualified in Nassau County
Commission Expires July 31, 2010