

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Case No. 05- M-\_\_\_\_\_**

**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**

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**PRELIMINARY STATEMENT**

M-GBC, LLC (“M-GBC”) seeks, by this petition, the following relief from the Public Service Commission (“the Commission”):

First, M-GBC requests a certificate of public convenience and necessity to own, operate and maintain an existing steam plant and an existing electric substation, and, if necessary, a certificate for existing nonpotable, sprinkler water services. These services were previously provided by the Town of Riverhead, M-GBC’s predecessor as the owner of real property located in Calverton New York, in the Town of Riverhead, and known as the Calverton Planned Industrial Park (“Calverton Industrial Park” or “Calverton property”). M-GBC has continued to provide these services pursuant to contracts with various entities that acquired portions of the Calverton property from M-GBC.

Second, M-GBC seeks a declaratory ruling that it will be subject to lightened regulation or, alternatively, the minimum regulation appropriate for the continued provision of its steam, electric and sprinkler water services, because those services are subsidiary and incidental to M-GBC’s

primary business, i.e., to own, operate and develop real property in the Calverton Industrial Park.

Third, M-GBC seeks approval of the annexed proposed tariff for M-GBC's steam services, which would be applicable to the extent M-GBC is unable to reach agreement with entities that desire steam services within the confines of the Calverton Industrial Park. A tariff approved by the Commission is required, because disputes have arisen regarding the charges for those services.

Fourth, M-GBC seeks an expedited hearing of its requests for relief.

### **FACTUAL BACKGROUND**

#### **A. Acquisition By M-GBC From Town Of Riverhead Community Development Agency Of Calverton Planned Industrial Park**

M-GBC is a limited liability company organized under the laws of the State of New York, with its office located at 2545 Hempstead Turnpike, Suite 401, East Meadow, New York 11554. (Copies of a certificate of good standing and the Articles of Organization of M-GBC are annexed hereto as Exhibit A.) M-GBC owns, operates and is engaged in the development of real property located in Calverton, New York, specifically, the Calverton Industrial Park. M-GBC acquired the Calverton property from the Town of Riverhead Community Development Agency ("the Town") on or about October 16, 2001 in connection with the comprehensive redevelopment of the site by the Town. The Town acquired the Calverton property in or about September 1998 from the United States Navy for purposes of economic development.

#### **B. Steam Services**

## **1. Steam Plant**

The Calverton property includes a pre-existing oil-fired steam generation facility that was owned and operated by the Town prior to M-GBC's acquisition. The plant was formerly known as the Naval Weapons Industrial Reserve Plant and was originally built by the Navy in 1952. For many years during the period of Navy ownership, the plant supported various buildings and facilities used by the Grumman Corporation in connection with Grumman's aerospace programs.

The steam plant is comprised of a central power plant that provides steam to other buildings on the Calverton property via underground piping. Steam is distributed at 40 to 140 pounds per square inch pressure levels, depending on the outside temperature. The plant has three boilers that were installed in or about 1996 and are fired by number 2 fuel oil. Two of the boilers have design capacities of 59.1 million Btu/hour and one boiler has a design capacity of 29.1 million Btu/hour. An air permit for these boilers was obtained from the New York State Department of Environmental Conservation ("DEC") by the Town, and the DEC subsequently approved the transfer of the permits to M-GBC. A fourth boiler, with a design capacity of 8.4 million Btu/hour was recently installed at the facility. M-GBC has notified DEC that this boiler should be added to its existing air permit as an exempt item. (A diagram of the plant showing the four boilers is annexed hereto as Exhibit B.)

Prior to M-GBC's purchase of the Calverton property, the Town supplied steam from the plant to a number of the buildings located on the Calverton property. Those buildings were leased by the Town to various commercial tenants. Subsequent to the M-GBC purchase, a number of the remaining tenants purchased the property on which their buildings were located, and M-GBC continued to supply steam services to some of the Town's former tenants and other occupants of the

Calverton Industrial Park, as requested.

At the present time, the total capacity of the four boilers far exceeds the usage required to service the property owners or other occupants at the Calverton Industrial Park who have received steam service since 2001 or who currently seek such service from M-GBC.

## **2. Purchase Agreements**

Pursuant to purchase agreements for various portions of the Calverton property, M-GBC agreed to supply steam and other utility services at fees, charges and rates that are “comparable to those imposed in the surrounding area”.

M-GBC desires to supply steam at fees, charges or rates consistent with its obligations under its agreements. However, M-GBC has been unable to reach agreement with the parties to those agreements on the rates that would meet the criteria set forth in the agreements, i.e., charges, fees and rates that are comparable to the charges, fees and rates imposed in the surrounding area. Accordingly, M-GBC seeks approval of the proposed tariff accompanying this Petition for rates applicable to those entities that request steam services from M-GBC but are unable to agree with M-GBC on the appropriate rate.

## **C. Electric Substation**

An electric substation is also located on the grounds of the Calverton property. The incoming voltage is metered at 69,000 volts, but the outgoing voltage from the substation is reduced to 13,800 volts. As with the steam facility, M-GBC continued to provide service to various entities located on the grounds of the Calverton Industrial Park.

## **D. Fire Sprinkler Water**

Prior to M-GBC's acquisition of the Calverton property, potable and nonpotable water was provided to users at the Calverton property by onsite wells. Since the acquisition by M-GBC, potable water has been supplied to users at the Calverton property from the Town of Riverhead Water District, but M-GBC provides nonpotable fire sprinkler water only, emanating from the Town of Riverhead Water District.

**E. Utility Charges**

Since its acquisition of the Calverton property, M-GBC has formulated rates for usage of the steam, electric and nonpotable water services based on the costs it has incurred in providing those services. For example, M-GBC has formulated rates for steam usage based upon some but not all of the fixed costs for the steam plant (e.g., for labor, chemicals, equipment usage and parts, but not property taxes and sewer rents), developed a constant number for those costs and multiplied that number by the usage based on meter readings. Since M-GBC is not a municipality, M-GBC did not have the benefit of exemptions applicable to the Town when the Town owned the steam plant. Thus, costs incurred by M-GBC are not comparable to the costs previously incurred by the municipality. Moreover, the usage, and consequently the steam plant load, has fluctuated significantly from month to month, week to week and day to day, because a number of the users sought steam services primarily on a demand basis, dramatically affecting the costs incurred by M-GBC. Escalating fuel prices further increased M-GBC's costs.

As noted above, various entities receiving steam services have not been able to agree with M-GBC as to the proper charges for those services. Thus, from time to time, some of the entities receiving steam services from M-GBC have failed or refused to pay for some or all of those services. M-GBC was forced to commence a suit against one entity, which owed M-GBC in excess of \$50,000

for those services. In their answer to the complaint, this entity asserted as a defense that M-GBC's recovery was barred by virtue of N.Y. Public Service Law §§ 78 and 88. That suit is still pending. More recently, M-GBC was served with an order to show cause, which included an injunction requiring it to continue to provide steam to this entity notwithstanding the continuing dispute over costs.

Thus, M-GBC is presented with a quandary: a court order requiring it to continue to provide steam in the absence of an agreement regarding the charge for those services, and more significantly, the absence of a determination of M-GBC's regulatory status by the Commission. These circumstances underscore the need for an expedited hearing.

### **PETITIONERS' REQUESTS**

#### **I. PETITIONER REQUESTS A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR STEAM, ELECTRIC AND, IF NECESSARY, WATER SERVICES**

##### **A. Issuance Of A Certificate Is Appropriate**

By this petition, M-GBC seeks Commission authorization to operate, maintain and provide utility services at the Calverton Industrial Park through and from the existing steam plant, electric substation and fire sprinkler water system. (The utility lines for these services are depicted on annexed Exhibit C.)

M-GBC appears to be classified as a "utility company" pursuant to the Public Service Law (section 2[23]) and, more specifically, as a "steam corporation" (under section 2[22]), an "electric corporation" (under section 2[13]) and a "water-works corporation" (under section 2[27]), because

it owns, operates and/or manages a steam plant, electric substation and fire sprinkler water services<sup>1</sup> at the Calverton Industrial Park. Since M-GBC intends to continue to provide steam, electric and fire sprinkler water services to current and potential future owners of properties within the Calverton Industrial Park, M-GBC does not qualify for the exemptions under the Public Service Law for providing services to tenants at the Calverton property. (A diagram showing the buildings located within the Calverton Industrial Park, and a list of the entities currently receiving steam, electric or water sprinkler services, are annexed hereto as Exhibits D and E, respectively.)

It is in the public interest to grant M-GBC a certificate of public convenience and necessity, because current and future recipients of these utility services will have the benefit of onsite utilities, which presently are not otherwise available to the entities located in the Calverton Industrial Park.

The Commission has recognized analogous positive benefits in granting similar applications by Fresh Meadows Development, L.L.C., Griffiss Local Development Corporation, Grumman Aerospace Corporation, Eastman Kodak Company, Rochester Technology Park Utility Company, LLC., and others.<sup>2</sup>

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<sup>1</sup>We note that the Commission has questioned the extent to which jurisdiction should be exercised over nonpotable water service. Compare Case 02-W-0742, *Independent Water Works, Inc.*, Untitled Order (November 22, 2002) with Case 04-W-0886, *Northrop Grumman Corp.*, Order Granting Exemptions from Water Regulations (October 27, 2004). In the event the Commission determines to exercise jurisdiction over the nonpotable water service at the Calverton property, M-GBC requests that the Commission apply the minimum regulatory requirements appropriate.

<sup>2</sup>Case 99-S-0413, *Fresh Meadows Development, L.L.C.*, Order Granting Certificate of Public Convenience and Necessity (November 16, 1999) (steam); Case 98-S-1174, *Griffiss Local Development Corporation*, Order Issuing Certificate of Public Necessity and Providing for Lightened Regulation (September 9, 1999) (steam); Case 95-M-1133, *Grumman Aerospace Corporation*, Order Granting Certificate of Public Convenience and Necessity (August 9, 1996) (electric and steam); Case 04-M-0388, *Eastman Kodak Company*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened and Incidental Regulation (August 2, 2004) (gas, electric, steam and water); Case 01-S-1750, *Rochester Technology Park, LLC*, Order Issuing Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (February 1, 2002) (steam).

**B. M-GBC's Request For Certification Is In Compliance With SEQRA**

Annexed hereto as Exhibit F is a completed Environmental Assessment Form ("EAF") relating to the continued provision of steam, electric and sprinkler water services at the Calverton Industrial Park. Because the authorization sought by this petition involves services that existed prior to M-GBC's acquisition of the Calverton property, the anticipated environmental impacts, if any, are minimal. Petitioner respectfully requests that the Commission assume lead agency status under the State Environmental Quality Review Act ("SEQRA") and the regulations promulgated thereunder,<sup>3</sup> and adopt a negative declaration with respect to the requested action.

The Commission has previously found that continuation of steam service does not present any adverse impacts on the environment. In the *Fresh Meadows* order, the Commission assumed lead agency status and adopted a negative declaration under similar circumstances.<sup>4</sup> Moreover, the New York State Department of Environmental Conservation previously found that the acquisition of the steam plant by the Town from the Navy and the continued operation of the plant by the Town did not present any adverse impacts to the environment. (See Exhibit G.) A similar conclusion is appropriate with respect to the electric and water utility services.

**II. PETITIONER REQUESTS THAT IT BE SUBJECT TO LIGHTENED REGULATION**

Petitioner seeks lightened regulation for its proposed utility operations pursuant to Public Service Law §§ 66[13] (electric), 80[11] (steam), and 89-c[11] (water). These sections contain virtually identical language. For example, Section 80[11] provides with respect to steam

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<sup>3</sup>6 NYCRR § 617.1 *et seq.*

<sup>4</sup>Case 99-S-0413, *Fresh Meadows Development, L.L.C.*, Order Granting Certificate of Public Convenience and Necessity at p. 5 (November 16, 1999).



corporations, in pertinent part, as follows:

In any such case if the owning, operating, managing or controlling of such steam plant by any such corporation is wholly subsidiary and incidental to the other business carried on by it and is inconsiderable in amount and not general in its character, the commission may by general rules exempt such corporation from making full reports and from the keeping of accounts as to such subsidiary and incidental business. . . .

The ownership, operation and maintenance of the existing steam plant, electric substation and sprinkler water facilities is subsidiary and incidental to the primary business of M-GBC. As noted earlier, M-GBC's primary business is to own, operate and develop real property in the Calverton Industrial Park. While the steam plant, electric substation and sprinkler water service support the development of the Calverton Industrial Park, the operation and maintenance of these facilities represent only a small portion of M-GBC's activities with respect to the Calverton property.

The Commission has approved lightened regulation for similar ventures. For example, in the *Griffiss* proceeding, the Commission ordered that the petitioner was entitled to lightened regulation because "[i]t will serve only a limited number of customers, constrained by the limited size of the Park."<sup>5</sup> Similarly, the utility operations of M-GBC are incidental in nature and physically limited to the Calverton property and its occupants.

Moreover, the steam, electric and water sprinkler services provided by M-GBC have been, and will continue to be, safe and adequate. However, M-GBC is not a "traditional utility". The steam plant, electric substation and sprinkler water services are truly incidental to M-GBC's business. For example, in 2004, total utility expenses incurred by M-GBC as of the middle of

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<sup>5</sup>Case 98-S-1174, *Griffiss Local Development Corporation*, Declaratory Ruling at p. 5 (September 25, 1998).

December exceeded the total revenues received for steam, electric and water services. Additionally, the total revenue generated for these services on an annual basis represents only a small fraction of the income generated by the sale of properties in the Calverton Industrial Park, which is the fundamental purpose of M-GBC's business. Thus, lightened regulation is important to M-GBC's operations. More comprehensive regulation of the limited nature of the utility operations conducted within the Calverton Industrial Park would increase the cost of providing service to the occupants of the park and would, in any event, be wholly unnecessary under the circumstances.

In sum, state and local interests in economic development would be furthered by a Commission ruling that M-GBC's utility-like activities will be subject only to lightened regulation. Accordingly, while M-GBC may be subject to regulations related to environmental and safety concerns, it should be exempted, to the maximum extent permitted by law, from other regulatory requirements within the Commission's jurisdiction, including being exempt from keeping accounts, books and records; from filing annual reports; and from the filing of rate schedules and tariffs (except to the extent required as the only means of setting rates for its services consistent with the Public Service Law).

### **III. PETITIONER REQUESTS APPROVAL OF THE ANNEXED TARIFF FOR STEAM SERVICES TO THE EXTENT PETITIONER IS UNABLE TO REACH AGREEMENT ON THE CHARGES FOR THESE SERVICES**

As noted earlier, M-GBC has been unable to obtain full agreement for its steam service charges, even though M-GBC has not sought and does not seek to obtain a profit for providing these services. Accordingly, M-GBC seeks approval of the proposed tariff, which accompanies this Petition, for application in those instances where it is unable to reach agreement with the recipients

of its steam services. The proposed tariff is based on M-GBC's best estimate of the actual costs incurred by M-GBC in its ownership, operation and management of the steam plant.

#### **IV. M-GBC MOVES FOR EXPEDITED CONSIDERATION OF ITS PETITION**

Petitioner's application for a certificate of public convenience and necessity and for lightened regulation is in the public interest and it is reasonably anticipated that this will be an uncontested application, since no other utility provides steam service within the surrounding area, or anywhere in Suffolk County, and electric and nonpotable water services are not otherwise available within the Calverton Industrial Park. Petitioner thus moves for expedited proceedings pursuant to 16 NYCRR § 21.10.

Pursuant to section 21.10(a)(3) of the Commission's Rules, public notice in the form annexed hereto as Exhibit H will be made in local newspapers, within fourteen (14) days of the date on which this petition is filed.

Copies of this petition and the public notice have been served on the interested parties as required by 16 NYCRR § 21.10(a)(2).

## **CONCLUSION**

WHEREFORE, for the foregoing reasons, petitioner M-GBC, LLC respectfully requests that the Commission (1) issue a certificate of public convenience and necessity authorizing petitioner to own, operate and maintain the existing steam plant, electric substation and nonpotable, sprinkler water services, (2) issue a declaratory ruling that petitioner will be subject only to lightened regulation, (3) approve the proposed tariff for steam services, and (4) expedite review of this petition.

Dated: Garden City, New York  
January 14, 2005

Respectfully submitted,

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Attorneys for the Petitioner

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