

Alexander C. Stern  
Associate General Regulatory  
Counsel

Law Department  
80 Park Plaza, T5G, Newark, NJ 07102  
tel: 973.430.5754 fax: 973.430.5983  
Alexander.Stern@PSEG.com



**PSEG**

Services Corporation

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BOARD OF PUBLIC UTILITIES  
MAIL ROOM

September 17, 2015

**BY ELECTRONIC AND OVERNIGHT MAIL**

Irene Kim Asbury, Secretary  
New Jersey Board of Public Utilities  
Division of Economic Development and Energy Policy  
44 South Clinton Ave, PO Box 350  
Trenton, NJ 08625-0350

**Re: American Dream Meadowlands Project Service Extension – Petition  
for Declaratory Ruling  
Non-Docketed Matter** EO15091080

Dear Secretary Asbury:

On behalf of Public Service Electric and Gas Company ("PSE&G" or "Public Service"), please accept this letter petition in lieu of more formal submission seeking a declaratory ruling from the New Jersey Board of Public Utilities ("Board") that it supports PSE&G continuing service extension work associated with the American Dream Meadowlands Project ("American Dream") without securing a developer deposit. As explained further below, although well-established Board policy requires that PSE&G obtain a deposit from a developer, this project is unique in terms of engineering, size and scope as well as economic development, public policy significance and support.

Pursuant to N.J.S.A. 52:14B-8, the Board is duly authorized, upon the request of any interested person, to render a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. Based on this statutory authority, Public Service respectfully request that the Board issue an order providing the relief requested herein.

CMS

Legal

DTC

RPA

S. Peterson

A. Bator

J. May

Energy rule(4)

**Background**

For over a decade, the State of New Jersey has been exploring development initiatives targeted at economic development and growth in the Meadowlands. In February 2003, the New Jersey Sports and Exposition Authority ("NJSEA") initially approved American Dream, then known as "Meadowlands Xanadu," for a site adjacent to the Izod Center. Neither Mills Corporation — the original developer — nor its first successor, Colony Capital, managed to complete the project. In 2010, the current developer, Triple Five, took control of the project and renamed it "American Dream."

Triple Five Worldwide is a multinational diversified conglomerate, development and finance corporation with offices in major United States, Canadian and global cities. Triple Five Worldwide Group of Companies has developed, owns and manages the world's first, second and third largest tourism, retail and entertainment complexes of its kind: the 5.3 million square-foot West Edmonton Mall in Alberta Canada, the 4.2 million square-foot Mall of America in Minnesota and now American Dream in New Jersey.

American Dream construction resumed in earnest in 2014 after a five-year delay, with a foundation being prepared for an indoor water and amusement park as well as some exterior work. The project has grown in size over the last two years, with Triple Five adding the amusement and water park portion to the original plans. In June 2015, the New Jersey Local Finance Board ("LFB") approved an amended project plan with a \$750 million budget increase due to the added three-story building "connector" linking the retail portion to the indoor water and amusement park complex. The New Jersey Economic Development Authority, the LFB, East Rutherford as well as numerous state

and local public officials have all been involved with and supporting American Dream financing and development.<sup>1</sup>

The American Dream project description calls for 2.9 million square-feet of retail/restaurant leasable space and 346,100 square feet of amusement park space. The retail/restaurant portion will include six anchor tenants, 339 small shops, 21 restaurants, 45 specialty food tenants, 20 food court tenants and five kiosks. Self-operated entertainment anchors will include a movie theater, performing arts center, a snow dome, observation wheel, miniature golf and an ice rink - all on 250,000 square feet.

Triple 5 expects American Dream to generate 5,810 construction jobs and 10,580 permanent jobs, with a projected opening date of mid-2017. Triple 5 estimates that the project's retail portion has the potential to generate \$1.5 billion in annual sales. The average retail sales per square foot are \$835-\$1,183. Retail analysis forecasted \$56 million to \$79 million in annual sales taxes in the first year, and up to \$128 million by the 30th year. Triple 5 has further represented that, so far, it has 52 leases executed, 49 under negotiation and another 208 letters of interest, representing 64 percent of the gross leasable areas.

#### **Unique Utility Challenges Posed By American Dream Service Extension**

The American Dream project poses unique engineering challenges for Public Service which has required significant time, resources, investment and planning with development scope and developer changes adding further to the complexities.

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<sup>1</sup> Costs associated with the American Dream project have been estimated to total \$3.2 billion. Upon information and belief, Triple 5 has, or is in the process of receiving \$1 billion in financing from state and local government entities. East Rutherford has already agreed to issue up to \$675 million in non-recourse bonds to finance construction of American Dream, while NJSEA has agreed to issue up to \$350 million in non-recourse bonds. The NJSEA bonds are backed by a \$390 million tax break that Triple 5 received from EDA. The state is supposed to be paid back through part of the sales-tax revenue that American Dream is expected to generate.

*A. Significant Load Request*

American Dream's service extension request totals approximately 45MWs in additional load. To put it in perspective, this load request is more than double the size of any service request received in the last five years and might, in fact, be the largest load request PSE&G has ever received.

*B. Unique Substation Design*

To meet its obligation to serve, Public Service has determined it to be necessary to build a unique substation facility capable of meeting the additional load and the developer's schedule. In this context, it must be noted that unlike a large residential development or even other large commercial developments in which loads increase over time as new residents move into the community or commercial operations ramp up, American Dream requires that PSE&G anticipate full load obligations soon after the project is fully energized.

To accomplish the objectives, it has been determined that a PSE&G substation located in Carlstadt, New Jersey ("Carlstadt Substation") will need to be modified to support 26kV as opposed to 13kV. Moreover, presently PSE&G does not have any 69kV to 26kV transformers in its electric system. To efficiently and expeditiously facilitate the American Dream project while also balancing that objective with the need to ensure reliable service throughout the surrounding area, the Carlstadt Substation will have two 69kV to 26kV transformers as well as a required spare transformer for reliability. As previously noted, this equipment will be unique to the PSE&G system.

**PSE&G Activity to Date**

Thus far, Public Service has expended in excess of \$1 million on engineering, design and permitting associated with ensuring reliable service to the surrounding area while incorporating additional load from a fully built out American Dream complex.<sup>2</sup> Additionally, PSE&G has made commitments to vendors for the procurement of transformers and switchgears such that, at this juncture, there could be cancellation charges.

Over the course of the past several years, PSE&G has forwarded service extension agreements to the predecessor developers and, more recently, over the past year, has forwarded service extension agreements to Triple 5 for both the retail complex and the amusement park. Public Service has also explained to Triple 5 the basis for its determination that, consistent with the provisions of N.J.A.C. 14:3-8.1 et seq., Board policy as well as well-established New Jersey case law, the developer is supposed to advance the costs associated with the electric distribution service extension requested subject to refund if the forecasted loads are met. For American Dream, the electric distribution service extension deposit totals approximately \$7.2 million.<sup>3</sup> However, if American Dream reaches its forecasted load targets, the deposit should be refunded back to Triple 5 in a relatively short period of time following commencement of operations.

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<sup>2</sup> It should be noted that PSE&G extended service in accordance with the requests made by the prior developers of the site in or about 2005. Although the prior "Xanadu" project never commenced operation, the capacity associated with the project was never reserved. Accordingly, over the past ten years the capacity of the 2005 service extension has been properly allocated for use in serving both new and existing customers. The PSE&G electric distribution assets were also energized to support basic operational functions at the site.

<sup>3</sup> PSE&G will also separately incur further costs in connection with necessary distribution and transmission work that is required in preparation for the actual service extension for which it is seeking a deposit from the developer.



American Dream has indicated to Public Service that, at present, it would be detrimental to the success of the project for any level of monies to be tied up in a deposit with PSE&G. In the absence of the deposit from Triple 5, PSE&G has suspended its efforts associated with the project pending receipt of guidance from the Board. Given the uniqueness of the project, Public Service does not object to continuing its efforts to advance the objectives of the development, but in order to do so, it requires confirmation from the Board that it concurs with PSE&G that this would be a reasonable and prudent course of action given the factual and historical circumstances underlying the project.

#### **Legal Background**

The BPU has a well-established process governing utility extensions of service which requires that, in the absence of "sufficient business," developers, not other ratepayers, bear the risks and burdens associated with development projects. N.J.S.A. 48:2-27. See also, In the Matter of CENTEX HOMES, LLC Petition for Extension of Service and/or for Exemption from Main Extension Rules N.J.A.C. 14:3-8.1 et seq. Pursuant to N.J.S.A. 48:2-27 and N.J.A.C. 14:3-8.8(A)(4) or (a)(6), 411 N.J. Super. 244, 261 (App. Div. 2009). Pursuant to N.J.A.C. 14:3-8.1 et seq., it is anticipated that utilities and developers will negotiate an appropriate deposit amount that is reasonable and prudent. The Board historically has only become involved if the developer and the utility cannot agree upon terms. The request here is one of first impression as Public Service and Triple 5 are not at present disputing the deposit amount. Rather, given the unique technical challenges as well as overall public benefits associated with the success of this project, Public Service is seeking confirmation from the Board that it would be

appropriate for it to continue its construction efforts in furtherance of project development without collecting a deposit from Triple 5.

In making this request, Public Service fully acknowledges that “sufficient business” does not at present exist to support utility upfront investment in the service extension. A long line of case law exists that defines “sufficient business.” The requirement under the statute is not satisfied by a showing that the area requesting extension of facilities is a “hot market.” Van Holten Group v. Elizabethtown Water Company, 121 N.J. 48 (1990) (developer failed to establish that proposed on-site and off-site water main extensions to community would provide “sufficient business” such that utility should be required to bear costs, and thus, developer was required to bear costs for such extensions, despite testimony that undeveloped area was “hot” real estate market). The statute requires that “a reasonable number of prospective users in a reasonably integrated or localized group within reasonable distance of existing facilities are desirous of service.” Id. at 61. Speculation regarding how many customers may exist at some point in the future is insufficient to satisfy the test. Ibid.

The policy underlying the statute is that the utility and its customers outside the area to be serviced should not have to assume the risks of extending facilities to areas that cannot clearly, by themselves, justify and sustain the expenditure. The statute does not require that the utility immediately realize a profit or be certain of the sufficiency of the new business before it must bear the costs of extensions. Nevertheless, the statute requires more than speculation concerning the business that calls for the extensions. Id. at 61-62.

Mindful that it is unlikely that the American Dream Project satisfies the “sufficient business” test under N.J.S.A. 48:2-27, Public Service has voluntarily filed this request for confirmation and guidance from the Board recognizing that the project is unique and has already been determined by various levels of government to be one that will provide significant public benefit.

**Declaratory Relief Requested**

PSE&G respectfully requests the Board to issue a declaratory ruling under N.J.S.A. 52:14B-8 confirming that it approves of PSE&G continuing its construction efforts associated with the extension of electric utility service to the American Dream project without collecting a deposit from the developer. Given the size of the deposit required, the significant forecasted load, the uniqueness of the engineering, the overall economic development and public benefit significance of the project as well as the state’s decade-long commitment to the project through EDA, LFB as well as other state and local government organizations and representatives, PSE&G is willing to continue moving forward with its service extension work without receiving the developer deposit required by Board policy, regulation and prevailing case law. However, before moving further along, Public Service seeks confirmation from the Board that it believes this to be reasonable and prudent given where this project currently stands.

Because this matter involves the implementation of the Board’s regulations and while having no impact on existing rates, because of the potential future impact on rates charged to customers, it is appropriate for the Board to make a determination with respect to this issue. Due to the objectives of both Triple 5 and the state targeted at having American Dream fully operational by 2017, PSE&G respectfully requests that the Board



September 17, 2015

treat this matter as being urgent and provide an expeditious review and resolution of the issue.

Communications with respect to this matter may be sent to the undersigned.

Respectfully submitted,



By:

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Alexander C. Stern  
PSEG Services Corporation  
80 Park Plaza, T5G  
Newark, NJ 07102  
(973) 430-5754  
[Alexander.Stern@pseg.com](mailto:Alexander.Stern@pseg.com)

C Paul Flanagan, BPU Executive Director  
Cynthia Covie, BPU Chief Counsel  
Bethany Rocque-Romaine, BPU Counsel's Office  
Tony Armlin, Vice President, Triple Five