



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. BOX 003  
TRENTON, NJ 08625

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BOARD OF PUBLIC UTILITIES  
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STEFANIE A. BRAND  
Director

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

January 21, 2016

**Via Hand Delivery and Electronic Mail**

Ms. Irene Kim Asbury  
Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: American Dream Meadowlands Project Service Extension  
Docket No. EO15091080**

Dear Secretary Asbury:

We are in receipt of the Board Secretary's letter dated January 13, 2016 (attached hereto) addressed to PSE&G in connection with the above referenced matter. PSE&G filed a Petition for a declaratory ruling on September 17, 2015 requesting that the Board invoke its authority pursuant to N.J.S.A. 52:14B-8 and issue a declaratory ruling that the Board "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" and to have the Board deem the waiver of the approximately \$7.2 million deposit to be "reasonable and prudent." Petition page 8. The Petition conceded that the project was risky stating that "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." Petition page 6. The

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*A. Moreau*  
*C. Pochales*  
*List Copied*

Petition goes on to “fully acknowledge” that American Dream does not have sufficient business and that “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.” Petition pages 6-7. Thus, the Company concedes, and Rate Counsel agrees, that the relief sought is against well-established Board policy.

By letter dated October 5, 2015, Rate Counsel expressed both legal and factual concerns regarding PSE&G’s request. Rate Counsel questioned whether the Board can grant the relief sought by PSE&G under N.J.S.A. 52:14B-8 and whether a project such as American Dream, that cannot afford a utility deposit and on its face appears highly risky, will ever be profitable enough to fully pay for the extension. To be clear, Rate Counsel does not have any objections to PSE&G going forward with the project at its own risk. Rate Counsel’s sole concern is the risk shifting that will occur if ratepayers must ultimately pay for the cost of the American Dream extension if it is not fully recovered if the project does not succeed. Accordingly, Rate Counsel requested that the Board set a procedural schedule including time for discovery, and if necessary, an evidentiary hearing.

The Secretary’s letter states that the issue of whether ratepayers generally will be required to fund the extension if the project ultimately cannot pay is not ripe and will be decided in the next rate case. However, the letter goes on to state that “the prudence or reasonableness of the expenditure, in the context of waiving the deposit, can be addressed at this time.” Although an administrative agency has discretion to make a declaratory ruling with respect to the applicability of a statute or rule enforced by the agency, it is unprecedented for the Board to

make a prudency determination via a Secretary's letter without any record before it. If the issue is not ripe, then determining the prudency of waiving the deposit, which will dictate whether PSE&G collects the money from ratepayers in the rate case if the project fails, is unsupported and inappropriate.

Therefore, it is Rate Counsel's belief that the Secretary's letter must be read as stating that the Board has made no final determination as to the prudency of the waiver of the \$7.2 million deposit and that PSE&G thus proceeds at its own risk. As noted in PSE&G's Petition and the Secretary's letter, PSE&G would have to build a unique substation facility that is not transferrable to any other part of PSE&G's distribution system. Petition page 4, Secretary's letter page 1. Thus, if the American Dream project fails, there is a real danger that a large portion of the costs would be stranded. The Secretary's letter keeps open the "not ripe" issue of who will ultimately bear the burden of such stranded costs. Rate Counsel reserves the right to argue that the waiver of the deposit given the facts of this case is imprudent, and is fully prepared to litigate this issue in PSE&G's next base rate case to be filed by November 2017.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stefanie A. Brand". The signature is written in dark ink and is positioned above a horizontal line.

Stefanie A. Brand  
Director, Division of Rate Counsel

Enclosure

c: Service List (via email and regular mail)



Chris Christie  
Governor

Kim Guadagno  
Lt. Governor

**State of New Jersey**  
BOARD OF PUBLIC UTILITIES  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

Irene Kim Asbury  
Secretary to the Board  
Tel. # (609) 292-1599

January 13, 2016

Alexander Stern, Esquire  
Associate General Regulatory Counsel  
PSEG Law Department  
80 Park Plaza, T5G  
Newark, NJ 07102

Re: American Dream Meadowlands Project Service Extension  
Docket No. EO15091080

Dear Mr. Stern:

My office is in receipt of a letter dated September 17, 2015 on behalf of Public Service Electric and Gas Company ("PSE&G") seeking a declaratory ruling that the Board supports PSE&G continuing service extension work associated with the American Dream Meadowlands Project ("American Dream") without securing a developer deposit. My office is also in receipt of a letter dated October 5, 2015 from the Division of Rate Counsel requesting that action be taken to allow for discovery, and if necessary, an evidentiary hearing. For the reasons set forth below, the Board supports the PSE&G's continuing investment in this project without the requirement of a deposit for the requested extension of service.

#### **Background**

It is undisputed that Triple Five Worldwide ("Triple Five") is the current developer of a project in the New Jersey Meadowlands named "American Dream." The site of the proposed development is the same location where a prior developer attempted, but failed to install, a development known as "Meadowlands Xanadu." It is represented that the project has grown in size and is currently proposed to have 2.9 million square feet of retail/ restaurant leasable space and 346,100 square feet of amusement park space.

PSE&G is the electric public utility serving the Meadowlands area. American Dream has requested for PSE&G to extend its service to the development. This service request extension is needed to bring an additional 45MW of power to the development. PSE&G represents that this "is more than double the load of any service request received in the last five years, and might, in fact, be the largest load request PSE&G has ever received." See PSE&G 9/17/15 Letter at p. 4. Indeed, PSE&G would have to build a unique substation facility capable of meeting the additional load. *Ibid.* In the meantime, PSE&G has expended in excess of one (1) million dollars on engineering, design and permitting to meet the service needs in the area as well as prepare to supply the additional load requested. *Id.* at p. 5.

PSE&G has requested a determination by the Board that continuing to provide this extension of service to the American Dream development, without the necessity of a monetary deposit by the developer, is a reasonably prudent expenditure.

### **Discussion**

PSE&G does not make application to the Board for the approval of an extension of facilities pursuant to N.J.S.A. 48:2-27. Rather, PSE&G seeks to continue its investment in the project extension without the requirement of a deposit by the developer. Ordinarily, PSE&G follows a voluntary practice of obtaining a deposit for extensions of service. The source of that practice is found in PSE&G's tariff structure, which states:

**Extensions – General Provisions:** Where it is necessary for Public Service to construct an Extension to serve the requirements of an Applicant, Public Service *may* require a deposit or contribution from the Applicant to cover all or part of the cost of the Extension, which is required to be paid to Public Service prior to any work being performed. Where a large portion of the cost of construction is related to the installation of underground facilities, the costs may be increased if severe conditions, such as excessive rock or other unknown conditions are found during excavation.

PSE&G, Standard Terms and Conditions, Para. 3.6, B.P.U.N.J. No. 15 Electric (Effective June 7, 2010) (emphasis added). Specifically, PSE&G's tariff terms allow PSE&G to determine the amount of any deposit which may be requested:

**Charges for Extensions:** Applicants requesting service *may* be charged a deposit for service. Such deposit will be determined by Public Service by comparing the estimated Distribution Revenue to the applicable costs of the Extension. The detailed calculations of such deposits, if any, are contained in the remainder of Section 3.7 of these Standard Terms and Conditions.

Id. at Para. 3.7 (emphasis added).

Given that the tariff structure makes the provision of deposit permissive, and not mandatory, a declaratory ruling by the Board to waive the requirement for a deposit is not ripe at this time under the facts presented. Although Rate Counsel has requested discovery, and "if necessary, an evidentiary hearing," there is no impact on rates or ratepayers at the present time. Although the Office of Rate Counsel, in the past, has not been actively involved in matters involving deposits for extension of service, it is understood that the concern of that Office is the impact on ratepayers should the project fail to produce the revenue to PSE&G that is anticipated to recoup PSE&G's investment.

Although PSE&G acknowledges that "it is unlikely that the American Dream Project satisfies the 'sufficient business' test under N.J.S.A. 48:2-27," meaning that the large forecasted energy usage intended to re-pay PSE&G's investment are not yet established under those legal standards, PSE&G acknowledges that this is a "unique" project, recognized to provide "significant public benefit." See PSE&G 9/17/15 Letter at p. 8. It may also be "the largest load request PSE&G has ever received," id. at p. 4, and if American Dream reaches its forecasted load targets, what it might have otherwise paid in deposit would be refunded back to them "in a relatively short period of time following the commencement of operations." Id. at p. 5. Accordingly, given the large degree of public financial

investment to ensure the success of this project, *id.* at p. 3, fn. 1, and the large forecasted loads associated with the project, PSE&G does not object to “continuing its efforts to advance the objectives of the development.” *Id.* at p. 6; *see also id.* at p.8 (“PSE&G is willing to continue moving forward with its service extension work without receiving the developer deposit”).

Although not ripe for a declaratory determination at this time, as any financial impact may be addressed in a future rate case, the prudence or reasonableness of the expenditure, in the context of waiving the deposit, can be addressed at this time. *See In re Board's Investigation of Tel. Companies*, 66 N.J. 476, 495 (1975) (utility expenses must be justified); *New Jersey Bell Tel. Co. v. Department of Public Utilities Bd. Of Public Com'rs*, 12 N.J. 568, 597 (1953) (an item of expense must pass the test of “reasonableness”); cf. *O'Brien v. Board of Public Utility Com'rs*, 92 N.J.L. 44, 49 (1918), *aff'd*, 92 N.J.L. 587 (E. & A. 1919) (just and reasonable rates includes the investment of capital and a return on capital). Board policy has allowed the consideration of the prudence of expenditures that may or may not be presented in a future base rate case. *See, e.g., In re the Board's Establishing a Generic Proceeding to Review the Prudence of Costs Incurred by NJ Utility Companies in Response to Major Storm Events in 2011 and 2012*, Docket No. AX13030196 (March 20, 2013).

PSE&G has expended in excess of one million dollars “on engineering, design and permitting associated with reliable service to the surrounding area while incorporating additional load from a fully built out American Dream complex.” *See* PSE&G 9/17/15 Letter at p. 5. If PSE&G were not to continue with this service extension project, PSE&G's investment will be lost and could then have a potentially negative impact on PSE&G ratepayers. Therefore, the more prudent course of action is to continue with the project in order to bring the project to fruition. Only if the project successfully opens and uses the large amount of energy which is anticipated, will PSE&G be able to recoup the investment already made in this project. Accordingly, continuing to invest in this project with a service extension, even without the necessity of a deposit, cannot be deemed imprudent.

Given the sizeable State and Local government financial investment in this \$3.2 billion dollar project, *id.* at p. 3, fn. 1, and given that there is no dispute between PSE&G and Triple Five to continue with the service extension without the necessity of a deposit, and given PSEG's investment in the project to date, it is both reasonable and prudent for PSE&G to continue its investment in this project at the present time.

Sincerely,



Irene Kim Asbury  
Secretary of the Board

c Ami Morita, Esquire, Deputy Rate Counsel

**PSE&G - American Dream  
Meadowlands Project Service  
Extension  
BPU Docket No. EO15091080**

**SERVICE LIST**

Ms. Irene Kim Asbury Secretary  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Paul Flanagan, Executive Director  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Honorable Cynthia Covie  
Chief Counsel  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Jerome May, Director  
Board of Public Utilities  
44 South Clinton Ave., 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Bethany Rocque-Romaine  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Kenneth Sheehan, Chief of Staff  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Stefanie A. Brand, Director  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

James Glassen, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Ami Morita, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Brian Weeks, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Lisa Gurkas  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Tony Armlin  
Vice President of Development  
and Construction  
Triple Five Group  
One Meadowlands Plaza - 6th Floor  
East Rutherford, NJ 07073

Alexander C. Stern  
PSEG Services Corporation  
80 Park Plaza, T5G  
Newark, NJ 07102

Joseph Accardo, Esq.  
PSEG Services Corporation  
80 Park Plaza, T5G  
Newark, NJ 07102

Caroline Vachier, DAG  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, NJ 07101

Jeffrey Gersten, DAG  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Floor  
P.O. Box 45029  
Newark, NJ 07101