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MEMORANDUM

To: CMP Policy & Implementation Committee Members

From: Stacey P. Roth 
Chief, Legal & Legislative Affairs

Date: March 12, 2020

Subject: Rule Language to Address Utility Projects that Receive an Exemption of Municipal Review from the Board of Public Utilities Pursuant to N.J.S.A. 40:55D-19

Enclosed please find draft language to address utility projects that receive a Board of Public Utilities exemption from municipal review pursuant to N.J.S.A. 40:55D-19. Staff refers to these rules as the “gap” rules. The “gap” occurs because these utility projects constitute private development applications which are only reviewed by the Commission if the local approval raises a substantial issue as to the conformance of the proposed development with the requirements of the CMP (the call up process provisions at N.J.A.C. 7: 50-4.38 and -4.40.) For utility projects for which BPU grants a petition preempting municipal review, there is currently no provision in the CMP that would provide an opportunity for direct Commission review, thus the “gap”. This is also the case with regard to the CMP’s coordinated permitting provisions at N.J.A.C. 7:50-4.81 through -4.85. In order to respond to the Court’s remand orders concerning the South Jersey Gas and New Jersey Natural Gas applications, the Commission adopted separate review processes by resolution for each application premised on the public development application provisions of the CMP.

The attached rule language was initially presented to the Committee at its June 28, 2019 meeting. At that time, the Committee members suggested a number of potential amendments that would have created a new application process and also directly impacted the existing public development application process. Although staff will continue to identify potential changes and improvements to our application procedures for the Commission’s consideration, it is very important that the Commission move forward with rulemaking to eliminate the gap first identified in the Appellate Division’s decision in Matter of Petition of South Jersey Gas Co., 477 N.J. Super 459 (App. Div. 2016). We believe this rule amendment needs to be included in the first set of CMP amendments and formally proposed as soon as possible.

6/27/19

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions in brackets [thus]):

SUBCHAPTER 4. DEVELOPMENT REVIEW

PART VII – COORDINATED PERMITTING WITH STATE AGENCIES

7:50-4.81 General requirements; applicant to submit application to Executive Director

- (a) (No change).
- (b) Prior to filing any application for development in the Pinelands Area with any department, board, bureau, official or other agency of the State of New Jersey, the applicant shall file with the Commission a duplicate copy of the application. The Executive Director may within 30 days require the applicant to submit any additional information which he **or she** determines is necessary in order to evaluate the interest of the Commission in such application. No State department, board, bureau, official or other agency shall deem an application for development complete unless it is accompanied by a Certificate of Filing, a Notice of Filing, a Certificate of Completeness or a resolution of the Pinelands Commission approving[, pursuant to the provisions of Part IV of this subchapter, an application for public] **the proposed** development. Notwithstanding these requirements, the Pinelands Commission may enter into an intergovernmental memorandum of agreement with any State department, board, bureau, official or other agency for the purpose of eliminating or altering any of the procedural requirements set forth in this subsection concerning the review by a State agency of third party development.

7:50-4.86 Action by Commission required

Upon receipt of a final determination by the New Jersey Board of Public Utilities pursuant to N.J.A.C. 7:50-4.83(d) that an application for development of public service infrastructure in the Pinelands Area qualifies for preemption from local review and approval pursuant to N.J.S.A. 40:55D-19, the Commission shall thereafter process and take action on the application for development in accordance with N.J.A.C. 7:50-4.53-4.57. The applicant shall be responsible for fulfilling the notice requirements set forth at N.J.A.C. 7:50-4.53. The requirements of this section shall apply whether or not the applicant is a public agency.