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 DIVISION OF RATE COUNSEL  
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BOARD OF PUBLIC UTILITIES

NOV 01 2017

MAIL RECEIVED

STEFANIE A. BRAND  
 Director

CHRIS CHRISTIE  
 Governor

KIM GUADAGNO  
 Lt. Governor

November 1, 2017

**HAND DELIVERED**

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

**Re: I/M/O the Petition of St. Peter's University Hospital, Inc. for a  
 Declaratory Ruling Pursuant to N.J.S.A. 52:14B-8 and  
 N.J.S.A. 2A:16-50 et seq.  
 BPU Docket No. QO17050495**

Dear Secretary Asbury:

Please accept for filing this original and ten copies of the comments of the Division of Rate Counsel ("Rate Counsel") regarding the above-referenced Verified Petition for a declaratory ruling filed on behalf of St. Peter's University Hospital, Inc. ("St. Peter's"). Enclosed is one additional copy. Please date stamp the copy as "filed" and return to our courier. Thank you for your consideration and attention to this matter.

CMS  
 Clean Energy  
 DAG  
 Legal

## INTRODUCTION

The above-referenced Petition involves a planned combined heat and power plant (“CHP Facility”) that would provide electricity and thermal energy to a hospital and other health care facilities located on an urban campus (the “Saint Peter’s Campus” or the “Campus”) in New Brunswick, New Jersey. *Petition, par. 1, 11.* St. Peter’s is seeking a declaratory ruling from the Board of Public Utilities (“BPU” or “Board”) that the CHP Facility would be an “on-site generation facility” as defined by the Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 et seq., and therefore St. Peter’s (1) would be exempt from payment of the Societal Benefits Charge or its equivalent on all electricity generated on-site by the CHP Facility and supplied to the Saint Peter’s Campus; and (2) would be permitted to build, own, operate and maintain all the infrastructure needed to generate and distributed electric and thermal energy from the CHP Facility to the buildings located on the Saint Peter’s Campus; and (3) would not be deemed to be a New Jersey public utility. *Petition, par. 20.*

Based on the facts stated in the Petition and in responses to Rate Counsel’s discovery, it appears that the CHP Facility will meet the criteria for an on-site generation facility, as those criteria have been interpreted by the Board. Rate Counsel accordingly has no objection to the granting of requested relief.

## FACTUAL BACKGROUND

As stated in the Petition, St. Peter’s is a non-profit corporation that owns an “integrated health care delivery system” that includes facilities housed in several buildings located on the Saint Peter’s Campus. *Petition, par. 1-3.* The facilities are sponsored by the Roman Catholic Diocese of Metuchen and owned and operated by Saint Peter’s. *Petition, par. 1-2.* The St.

Peter's Campus is depicted in several drawings and maps that are attached to the Petition.

*Petition, attached drawings and maps.* Based on a comparison of these materials with the Tax Map of the City of New Brunswick, the Campus occupies a large lot, Block 449, Lot 1.01, five smaller lots located to the east (Block 62, Lots 32 and 19, Block 63, Lot 23.01, and Block 64, Lots 5.01 and 19.01) and portions of two streets (Delafield Street and Guilden Streets) that have been vacated by municipal ordinance, also located to the east of the large lot. *Petition, attached drawings and maps; New Brunswick Tax Map, Sheets 1 and 73.1(attached hereto).* There are no public thoroughfares crossing the Campus. *Petition, par. 6.*

The proposed CHP Facility appears to be located on the large lot, Block 449, Lot 1.01. Four of the five smaller lots are contiguous to this large lot. Block 64, Lot 5.01, which contains one of the buildings to be served by the CHP Facility, does not directly adjoin the large lot, but does adjoin Block 64, Lot 19.01. *Petition, Attached Environmental Constraints Map; New Brunswick Tax Map, Sheet 1.*

The St. Peter's Campus currently includes two 2,000 kilowatt ("kW") emergency diesel generators, one 650 kW emergency diesel generator, a 350 kW solar array, and a 500 kW solar PV array. *Petition, par. 10; Response to RCR-9.* The CHP Facility is planned as a 2 megawatt ("MW") gas-fired generator that will produce electricity, steam and hot water for use on the St Peter's Campus. *Petition, par. 9.* The CHP Facility will have black start and islanding capabilities. *Petition, par. 8.*

St. Peter's is a participant in the Public Service Electric and Gas Company ("PSE&G") hospital energy efficiency program. Under the PSE&G program, St. Peter's plans to implement various energy conservation measures including interior lighting retrofits, interior lighting

controls, and upgraded kitchen exhaust hood controls. *Response to RCR-16*. The CHP Facility has been sized to in accordance with St. Peter's baseline electricity and thermal needs, and its long-term resiliency needs, taking account of the energy conservation measures it plans to implement. *Id.*

St. Peter's does not currently export any power and does not plan to do so after the CHP Facility is installed. *Response to RCR-11*. In order to prevent exports from occurring, the facility includes control equipment to assure that power is imported from the grid at all time when grid power is available. *Id.*

#### **RATE COUNSEL COMMENTS**

Based on the above facts as represented in the Petition and in responses to Rate Counsel's discovery requests, and based on the Board's recent interpretation of EDECA's definition of "on-site generation facility" it appears that the planned CHP Facility would be an "on-site generation facility." Rate Counsel accordingly has no objection to the granting of the relief requested in the Petition, subject to the conditions discussed below.

An "on-site generation facility" is defined in EDECA as follows:

"On-site generation facility" means a generation facility, including, but not limited to, a generation facility that produces Class I or Class II renewable energy, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way, or if the end use customer is purchasing thermal energy services produced by the on-site generation facility, for use for heating or cooling, or both, regardless of whether the customer is located on property that is separated from the property on which the on-site generation facility is located by more than

one easement, public thoroughfare, or transportation or utility-owned right-of-way.

N.J.S.A. 48:3-51.

Based on the statutory language, an “on-site generation facility” must meet two criteria: (1) it must provide electric power to a single “end use customer,” and (2) the facility must be “located on the property or on a property contiguous to the property on which the end user is located.”

With regard to the first criterion, the Petition stated all of the buildings to be supplied by the CHP Facility are owned by a single corporate entity, St. Peter’s. Additionally, the Petitioner’s response to Rate Counsel’s discovery have clarified that the facility will supply only this end user. St. Peter’s response to Rate Counsel’s discovery requests included a copy of an electronic mail message from Michael Savage of PSE&G Customer Solutions – Energy Services, to Robert Mulcahy, Vice President of Facilities, Safety and Environment of Care for St. Peter’s, which indicated Mr. Savage’s understanding that “you are now exporting ...” *Response to RCR-2 and RCR-3, April 13, 2017 e-mail from Michael Savage to Robert Mulcahy.* However, in a response to a subsequent discovery request, St. Peter’s represented as follows

Notwithstanding its objection [as to relevance] and without waiving the same, SPUH [i.e., St. Peter’s] states that SPUH does not plan to export any power after the CHP facility is placed into service.” In fact, the control scheme for the CHP requires a minimum import of utility power at all times in order to prevent export. The CHP generator controller is connected to the utility feed and controls generator power output to ensure that the grid power is imported at all time when the grid is available.

*Repsonse to RCR-11.* Based on the above representations, it appears that the CHP Facility, as currently planned would not provide power to any customer other than St. Peter’s.

Another discovery response states that the St. Peter's interconnection agreement with PSE&G "will not contain a provision providing for the export of power from the CHP facility to the power grid." *Response to RCR-8*. The same discovery response states the interconnection agreement has not been executed as yet. *Id.* St. Peter's further states that "the agreement will be produced when it is executed, but it is unclear when that will occur." *Id.*

With regard to the second criterion, as noted above, the Petition indicates that there are no public thoroughfares crossing the St. Peter's Campus. *Petition, par. 6*. Based on this representation and the various maps provided as attachments to the Petition, there do not appear to be any public thoroughfares, transportation or utility-owned rights-of-way separating the proposed site of the CHP facility from any of the building on the Campus. Thus, it is necessary only to determine whether each of the buildings to be served by the proposed CHP facility is located on the same property or a property "geographically next to" the proposed site of CHP facility. N.J.S.A. 48:3-51.

As discussed above, the St. Peter's Campus covers six separate lots and vacated portions of two streets, as shown on the New Brunswick tax map. The proposed CHP would be located on the largest of the six lots, and all except one of the other five lots immediately adjoin the large lot. As noted, Block 64, Lot 5.01 does not directly adjoin the large lot. Nevertheless, based on the Board's decision involving proposed CHP facility for the Cooper University Hospital in Camden, New Jersey, the St. Peter's Campus could reasonably be considered a single unified property. I/M/O the Petition of the Cooper Hospital System, a New Jersey Non-Profit Corporation for a Declaratory Ruling Pursuant to N.J.S.A. 52:14B-8 and N.J.S.A. 2A:16-50 et seq., BPU Dkt. No. QO16070727 (Apr. 21, 2017) ("Cooper Hospital"). One of the four sites

comprising the Cooper University Hospital complex, known as One Cooper Plaza, consists of several adjoining lots located within one city block and owned by a single corporate entity. See, Id. Rate Counsel Comments at 11. This site was referred to in the Board's Order as a single "property." Id., Order at 4.

Based on the representations in the Petition and the accompanying maps, it appears that the St. Peter's Campus presents a similar factual scenario. The Campus covers several lots and vacated portions of two streets but has been developed as a unified campus and is owned and operated by a single corporate entity. For this reason, the Campus could reasonably be considered a single "property."

Based on the above analysis, Rate Counsel has no objection to the granting of the declaratory relief requested in the Petition. However, Rate Counsel recommends that the Board's Order make it clear that its determination is based on the factual circumstances set forth in the Petition and in discovery responses. Specifically, the Board's Order should be subject to the following conditions:

1. The declaratory ruling applies only to the specific circumstances as detailed in the Petition, discovery responses, and other matters of record before the Board.
2. Any changes in the corporate structure of St. Peter's that alter the single owner status of the St. Peter's Campus, including but not limited to the sale of a portion of St. Peter's Campus to another entity, will render the Board's Order null and void and will require the filing of a new or amended Petition.


3. Any changes in the routing or configuration of the system, including but not limited to a change in the planned location of the CHP facility, any additional building to be served by the facility, and any re-routing of the project through any public thoroughfares, transportation or utility-owned easements, will render the Board's Order null and void and will require the filing of a new or amended Petition.
4. St. Peter's must file with the Board and provide Rate Counsel with a copy of its executed interconnection agreement with PSE&G.

### CONCLUSION

For all the foregoing reasons, Rate Counsel does not object to the granting of the declaratory relief requested in the Petition, subject to the conditions enumerated above.

Respectfully submitted,

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

By:   
Sarah H. Steindel, Esq.  
Assistant Deputy Rate Counsel

c: Service list (by hand delivery or regular mail, and by electronic mail)



**I/M/O the Petition of St. Peter's University Hospital, Inc. for a Declaratory Ruling  
Pursuant to N.J.S.A. 52:14B-8 and N.J.S.A. 2A:16-50 et seq.**

**BPU Docket No. QO17050495**

**ATTACHMENTS TO RATE COUNSEL COMMENT LETTER**

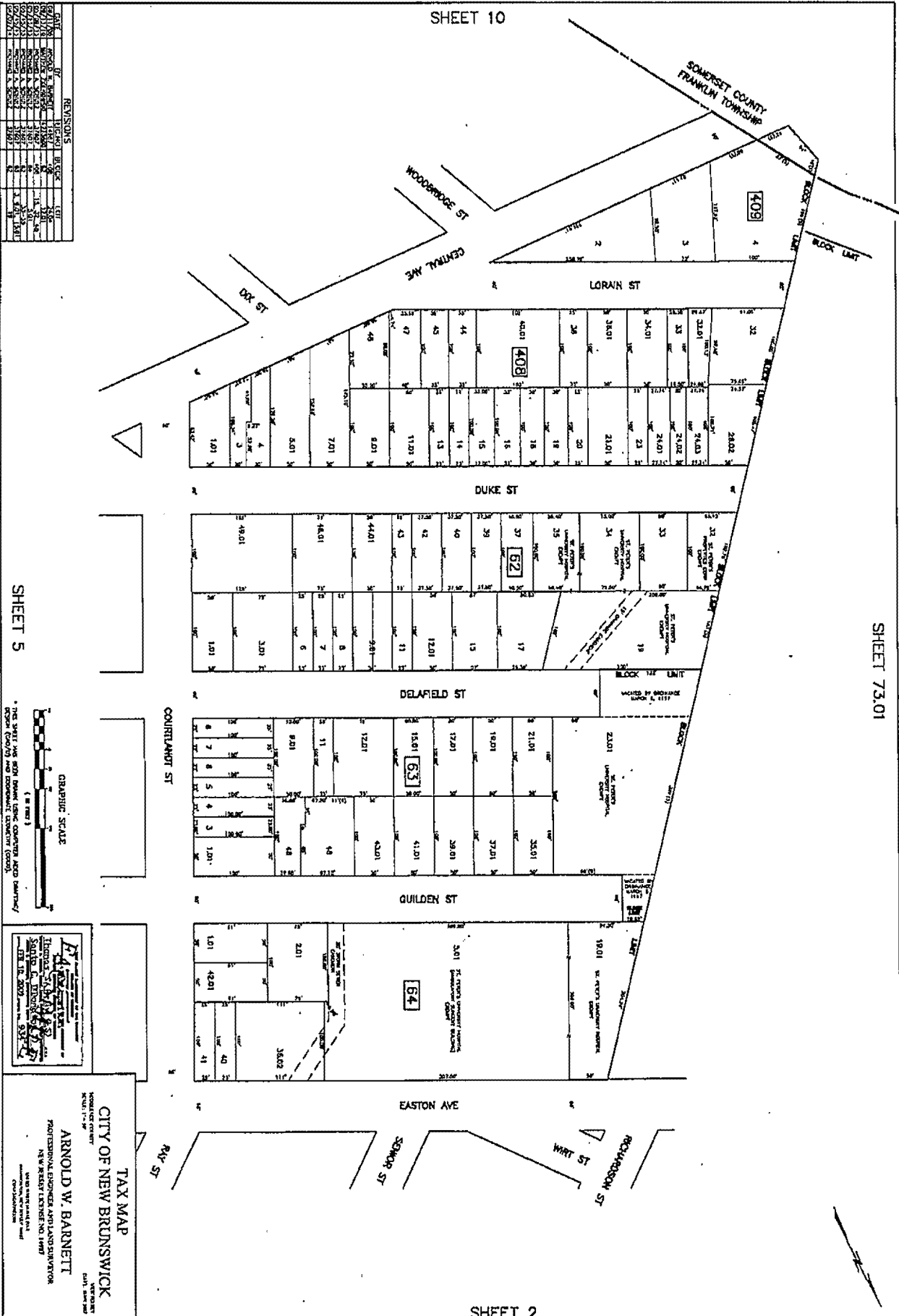
Tax Map of the City of New Brunswick

Sheets 1 and 73.01



SHEET 10

SOMERSET COUNTY  
FRANKLIN TOWNSHIP

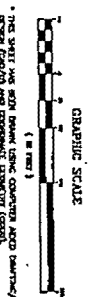


SHEET 73.01

SHEET 2

DATE	BY	REVISIONS	REVISIONS	DATE
01/17/03	W. BARNETT	1	1	01/17/03
02/11/03	W. BARNETT	2	2	02/11/03
03/11/03	W. BARNETT	3	3	03/11/03
04/11/03	W. BARNETT	4	4	04/11/03
05/11/03	W. BARNETT	5	5	05/11/03
06/11/03	W. BARNETT	6	6	06/11/03
07/11/03	W. BARNETT	7	7	07/11/03
08/11/03	W. BARNETT	8	8	08/11/03
09/11/03	W. BARNETT	9	9	09/11/03
10/11/03	W. BARNETT	10	10	10/11/03
11/11/03	W. BARNETT	11	11	11/11/03
12/11/03	W. BARNETT	12	12	12/11/03

SHEET 5



**TAX MAP**  
**CITY OF NEW BRUNSWICK**  
 ARNOLD W. BARNETT  
 PROFESSIONAL ENGINEER AND SURVEYOR  
 NEW BRUNSWICK LICENSE NO. 1573  
 1000 WEST 10TH AVE  
 CHARLOTTE, NC 28203

I/M/O the Petition of Saint Peter's  
University Hospital, Inc. for a Declaratory  
Ruling Pursuant to N.J.S.A. 52:14B-8 and  
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