



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF PETITION OF AG LOGAN )  
PARTNERS, L.L.C. TRIPLE NET INVESTMENTS )  
XXXIX, LLC AND AGP LOGAN, L.L.C. FOR A )  
DETERMINATION THAT AN ANTICIPATED FIRE )  
SUPPRESSION WATER SERVICE IS NOT A PUBLIC )  
UTILITY PURSUANT TO N.J.S.A. 48:2-13 ) DOCKET NO. WO20080520

**Parties of Record:**

**Michael F. Floyd Esq.**, Archer and Greiner, P.C., on behalf of Petitioners  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

**BACKGROUND**

On August 6, 2020, AG Logan Partners, L.L.C. and Triple Net Investments XXXIX, LLC, (collectively, "Petitioners"), together with AGP Logan, L.L.C. filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU"), seeking a determination as to whether the Board has jurisdiction over a proposed fire suppression system pursuant to N.J.S.A. 48:2-13. AG Logan Partners, L.L.C. is a New Jersey limited company, with its principal offices at c/o Greek Development, Inc., 33 Cotters Lane, East Brunswick, New Jersey 08816. Triple Net Investments XXXIX, LLC is a New Jersey limited company, with its principal offices at c/o J.G. Petrucci Co., Inc., 171 NJ-173, Asbury, New Jersey 08802. AGP Logan, LLC is an affiliated subsidiary of the Petitioners.

The Petitioners are developing property in Logan Township, Gloucester County, New Jersey. As part of the development, the Petitioners are proposing the construction of a fire suppression system to service the needs of two industrial parks known as "Logan North" and "Logan South." Logan North will be developed with approximately 3,181,623 square feet of warehousing, distribution, light industrial and office space, together with approximately 82,750 square feet of retail and/or commercial space. Logan South will be developed with approximately 1,874,900 square feet of warehousing, distribution, light industrial and office space, together with approximately 17,859 square feet of retail and/or commercial space. No residential uses are proposed or approved in either Logan North or Logan South.

The proposed private fire suppression system will include: (i) a metered eight-inch fire service supplied by New Jersey American Water Company (“NJAW”), (ii) a ground level water storage tank; (iii) fire water distribution lines; (iv) fire water service points of connections; (v) fire hydrants; and (vi) related infrastructure improvements, including pumps, a pump house, and a utility shed. The common components of the fire suppression system (e.g., items (ii) through (v)) will be owned and maintained by AGP Logan, L.L.C. Fire water service lines leading from the fire water service points of connection (item (iv)) will ultimately be the property of the individual building owners. Domestic water service will be supplied by NJAW through a separate water distribution network comprised of water distribution lines and water services to the proposed structures.

With respect to the proposed fire suppression system, NJAW will be providing private fire service at the point of connection to the proposed private fire suppression system through a metered eight-inch diameter fire service to be located near the proposed water storage tank. The Petitioners expect to be billed for fire service by NJAW under Rate Schedule L-2 in NJAW’s Board-approved tariff. Under this tariff, NJAW will bill a fixed charge for each fire sprinkler head and each private fire hydrant. The fire sprinkler heads will be located in each of the proposed buildings in Logan North and Logan South. AGP Logan, L.L.C. will be the customer of record for fire hydrants on the main lines and in common areas. The building owners will be the customers of record for the sprinkler heads within the buildings and fire hydrants located on the building lots. Volumetric charges rendered under Rate Schedule L-2 are computed under Rate Schedule A-1 and will be billed to AGP Logan, L.L.C.

Costs billed to AGP Logan, L.L.C. by NJAW as well as other operating and maintenance costs associated with the proposed fire suppression system, which will be owned and operated by AGP Logan, L.L.C. will be billed to the individual lot owners without mark-up. AGP Logan is providing for the maintenance and operation of the fire suppression system, which will service only those entities who are owners of the subdivided lots within Logan North and Logan South and who are subject to the Declaration of Covenants, Conditions and Easements for the Fire Water Service to Logan North and Logan South Industrial Parks, Logan Township (Gloucester County), New Jersey dated January 27, 2020 (“Declaration”). Service from the fire suppression system will not be available to the general public.

#### New Jersey Division of Rate Counsel (“Rate Counsel”) Comments

By letter dated February 1, 2021, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed its comments to the petition. Rate Counsel indicated that it has no objection to the issuance of a declaratory ruling from the Board that affirms that the proposed fire suppression system is not considered a public utility subject to Board jurisdiction. Rate Counsel noted that the Petitioners and AGP Logan, L.L.C. will not be providing water service to the public, there are no residential customers serviced by the system and there are no plans to develop residential uses. Rate Counsel further pointed out that the entities who will be served by the system will in fact receive bills for private fire service from NJAW, a regulated public utility, based on a Board-approved tariff. In addition, Rate Counsel stated through the Declaration, the prospective commercial and industrial building owners will also be assessed a proportionate share of the cost of maintaining the common elements of the private fire suppression system. The assets that comprise the proposed fire suppression system will be owned by AGP Logan and these assets essentially amount to nothing more than the privately-owned portion of a private fire service.

However, Rate Counsel requested that any declaratory ruling issued in this matter should contain language that indicates that the relief has been granted based on the facts presented and that if the facts change, the Board could assert jurisdiction.

### **DISCUSSIONS AND FINDING**

The Board has regulatory jurisdiction over public utilities; including entities that own, operate, manage, or control water plant or equipment for public use. N.J.S.A. 48:2-13. A water utility is an investor-owned public utility that provides water service, or a municipal public utility that provides water service to more than 1,000 billed customers in another municipality and charges a different rate to customers inside the municipality than it charges customers outside of the municipality. N.J.A.C. 14:9-1.2.

A determination as to whether an entity is a public utility must be made based on the provisions of N.J.S.A. 48:2-13, and relevant case law. See In the Matter of the Request of Princeton Bio-Technology Center Condominium for a Determination that Its Provision of Sewerage Treatment Services Does not Constitute Service Pursuant to N.J.S.A. 48:2-13, BPU Docket No. WO04101115, at 3 (Nov. 19, 2004) (hereinafter Princeton Bio-Tech). N.J.S.A. 48:2-13 provides, in pertinent part:

The term “public utility” shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any . . . pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.

Two conditions must exist in order to bring a water supplier within the above definition: “(1) that it owns, operates, manages or controls a water system for public use, and (2) that it does this under the privileges granted by the State or any of its political subdivisions.” Lewandowski v. Brookwood Musconetcong River Prop. Owners’ Ass’n, 37 N.J. 433, 443-44 (1962). The Petitioners represent that the system will require the issuance of New Jersey Department of Transportation and Department of Environmental Protection permits and therefore will be operated under privileges granted by the State as a result of the issuance of such permits. The remaining issue is whether the system is for the public use.

In considering the issue of public use, we consider “present and potential use, and all other facts and circumstances associated with the operation.” Princeton Bio-Tech, at 3 (quoting Alexander Hamilton Sav. & Loan Assoc. v. Dunn & Dunn, 70 PUR 3d 58, 61 (N.J. 1967)). The question as to whether there is a public use must be decided on a case-by-case basis. See In re S. Jersey Gas Co., 116 N.J. 251, 267-268 (1989). Additionally, we are guided by various factors, including, but not limited to the following:

- (1) whether a significant number of retail customers are being served;
- (2) whether the facilities are located in public streets and /or whether other public resources are utilized;
- (3) whether the company provides meters and/or charges separately for its service;

(4) whether and to what extent there is an economic impact on the regulated market; and (5) whether there is a potential for expansion.

[Princeton Bio-Tech, at 3 (citations omitted).]

In Princeton Bio-Tech, for instance, in holding that the owner of a private sewer system was not a public utility, we found that the sewer system was privately owned; that service would be provided to a restricted group; that no other customers/users would be solicited; and service would be provided through an allocation of costs with no profit realized by the owner/operator. Princeton Biotech at 3. See also, In the Matter of the Request of Exxon Research and Engineering Company For a Determination That Its Provision of Sewerage Treatment Services Does Not Constitute Utility Service Pursuant to N.J.S.A. 48:2-13, BPU Docket No. WO98111378 (Jan. 20, 1999) (finding that the use of a right-of-way, or the presence of meters, standing alone does not necessarily give rise to a finding of public use); In the Matter of the Request of Rock-GW, LLC and ExxonMobil Research and Engineering Company For a Determination That the Anticipated Provision of Sewerage Treatment Service By Rock-GW, LLC Does Not Constitute Utility Service Pursuant to N.J.S.A. 48:2-13, BPU Docket No. W0060503080 (June 7, 2006) (finding a sewer facility was not a public utility operating sewerage facilities for public use because, in part, the facility would not be expanded and the operation will have no impact on the regulated market related to sewerage services); In the Matter of the Request of Rock-GW, LLC For a Determination That the Anticipated Provision of Sewerage Treatment Service by Rock-GW, LLC to the Additional Properties of Lots 1, 3, 4 and 5, Block 1401; Lot 1, Block 1402 Florham Park; Lots 1 and 4, Block 1401 Madison Does Not Constitute Utility Service Pursuant to N.J.S.A. 48:2-13, BPU Docket No. WO08030188 (Dec. 9, 2008) (finding that a sewer system was not a public utility because the owner/operator received less revenue from the system than it costs to operate and the owner/operator would not be a long term operator of the system as it planned to sell it).

In the matter at hand, the Board has reviewed the record, including the petition, the Petitioners' discovery responses and Rate Counsel's comments. Based on the representations submitted on behalf of the Petitioners, the Board **ACCEPTS** the following facts:

1. The proposed fire suppression system will not be a metered service.
2. The proposed fire suppression system will be operated on a non-profit basis.
3. The proposed fire suppression system will not serve any residential customers.

In applying the above public use factors to the matter at hand, we note that the Petitioners' system is intended to serve only the parties to the Declaration. The Petitioners and AGP Logan, L.L.C. will own a system of water mains, valves, pumps, connecting lines, fire hydrants and a storage tank to be used to distribute water for fire protection to properties within the Logan North and Logan South industrial developments. Through the Declaration, the entities who will benefit from this fire suppression system are limited and well defined.

Likewise, with the limited exception of discrete points where segments of the pipeline system cross public rights-of-way on Route 322 at Crossroads Boulevard and Creekview Avenue, the proposed system exists on private property, which is or will be owned by the Petitioners, AGP Logan or prospective owners of the subdivided industrial and commercial lots. We have previously concluded that the fact that a main traverses a public right-of-way does not, without other factors, compel a finding of public use. See In the Matter of the Request of Exxon Research and Engineering Company For a Determination That Its Provision of Sewerage Treatment Services Does Not Constitute Utility Service Pursuant to N.J.S.A. 48:2-13, BPU Docket No. WO98111378 (Jan. 20, 1999).

Furthermore, the fire protection service is being provided by NJAW at the point of sale demarked by its eight-inch fire service meter. The Petitioners and AGP Logan are merely taking on the obligation to maintain what can reasonably be viewed as the “customer-owned” portion of a private fire service line.

With regard to the charges imposed by NJAW, the Board notes that, according to the Petitioners, NJAW will bill AGP Logan for elements of the fire suppression system deemed to be common elements and NJAW will also bill the prospective commercial and industrial building owners for the number of sprinkler heads and the number of private fire hydrants located on each property. The point of service will be the 8-inch diameter fire service to be located near the proposed water storage tank and pump station. AGP Logan’s responsibilities and the responsibilities of the prospective commercial and industrial customers are defined in the Declaration. There are no residential customers to be served by the proposed fire suppression system. Domestic water utility service will be provided to Logan North and Logan South by NJAW through a parallel water distribution system owned and operated by NJAW.

The operation of the system will also have no impact on the regulated market regarding, as service from the fire suppression system will not be available to the general public. Moreover, the proposed fire suppression system's private fire lines will use water from a ground mounted water storage tank instead of using public fire protection service from a regulated water utility. The water supply for the tank will be purchased from NJAW's domestic water system.

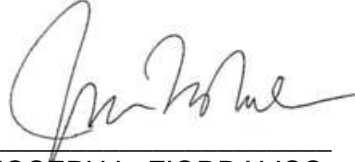
Regarding the potential for expansion, the Petitioners indicate that there will be no expansion of the proposed fire suppression system beyond the property boundaries of Logan North and Logan South. They maintain that the proposed fire suppression system will serve a maximum of 14 customers at Logan North; and a maximum of seven customers at Logan South. As such, any plans for expansion beyond these numbers would require the Petitioners to file a request with the Board for a further review and determination.

Therefore, the Board, based on the foregoing representations and the lack of objection by Rate Counsel, **HEREBY FINDS** that the proposed private fire suppression system provided by the Petitioners, AG Logan Partners, L.L.C., Triple Net Investments XXXIX LLC and AGP Logan, L.L.C, as described in their submissions to the Board, will not render them a public utility operating facilities for public use subject to regulation by the Board. Petitioners are further advised that this opinion is limited specifically to the facts presented and that changing conditions, including an expansion of service, which should be reported immediately to the Board, could subsequently lead to the modification of the Board’s decision. Therefore, prior to adding any additional users or customers beyond the proposed construction, the Petitioners will have to inform the Board and request a further determination.

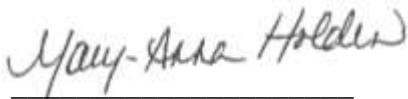
The effective date of this Order is March 13, 2021.

DATED: March 3, 2021

BOARD OF PUBLIC UTILITIES:  
BY:



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PRESIDENT



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COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER




UPENDRA J. CHIVUKULA  
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ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF PETITION OF AG LOGAN PARTNERS, L.L.C. TRIPLE NET INVESTMENTS XXXIX, LLC AND AGP LOGAN, L.L.C. FOR A DETERMINATION THAT AN ANTICIPATED FIRE SUPPRESSION WATER SERVICE IS NOT A PUBLIC UTILITY PURSUANT TO N.J.S.A. 48:2-13**

**DOCKET NO. WO20080520**

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