

Role Of The Bergen County Utilities Authority (BCUA) In Supporting The North Bergen Liberty Generating Station (Meadowlands Power Plant)

Background on the BCUA and Utilities Authorities

The mission of the BCUA as stated on its website (https://www.bcu.org/index.asp?SEC=0DAD512B-B279-40EB-A4A1-EDBDE32710A6&Type=B_BASIC) is (emphasis added by authors of this document):

Mission Statement

The BCUA's mission is to provide wastewater treatment and solid waste management services *for the citizens of Bergen County*.

On January 22, 2009 the BCUA passed a resolution stating the following (emphasis on protecting the environment added by authors of this document):

The Authority hereby restates and incorporates as part of its Mission Statement the precepts that:

(a) The Authority is committed to conducting its business in an *environmentally responsible manner* by maintaining a value system, which strives for continual improvement in compliance programs, *prevention of pollution*, and resource conservation;

(b) The Authority continues to fulfill its dual mission of providing excellent wastewater treatment and solid waste management services, while being ever being mindful of the important role we play in *protecting the environment*;

The actions of the BCUA are subject to the provisions of N.J.S.A. 40:14B-14b, also known as the "municipal and county utilities authorities law." There is little specific information in this law regarding oversight of the utility authority. The closest to this are the following sections:

Any governing body may, in the case of a county by resolution or ordinance duly adopted, create a public body corporate and politic under the name and style of "the county utilities authority, " with the name of said county or municipality inserted. Said body shall consist of the five members thereof, who, in the case of a county utilities authority, shall be appointed by the county governing body, or by the county executive pursuant to section 37 of P.L. 1972, c.154 (C.40:41A-37), as appropriate.

40:14B-16. Term of member; removal; hearing

Each member of a municipal authority shall hold office for the term for which he was appointed and until his successor has been appointed and has qualified. A member of a municipal authority may be removed only by the governing body by which he was appointed and only for inefficiency or neglect of duty or misconduct in office.

When asked about their responsibility for the actions of the BCUA and their ability to control it, the BC Freeholders have stated that it is an independent agency. However, it is unreasonable to think that there is no control whatsoever and no ability to exert oversight over this agency. It is reasonable to assume that such control exists by those who established it and manage the county and that this control is exercised by either or both the Freeholders and the County Executive, Mr. Tedesco. Moreover, this control is at odds with the numerous statements from the BC Freeholders that since the power plant is being built in Hudson County, they have no control over it. Clearly, the plant cannot be built without a source of cooling water and the Bergen Freeholders and County Executive should exercise this authority to oversee the operations of the BCUA in accordance with its mission and in the best interests of their residents.

40:14B-60. Discharge of sewage; discharges into sewage, solid waste or water systems; violations; injunction

(c) No county, municipality or person shall discharge or suffer to be discharged directly or indirectly into the water system of any municipal authority or on any lands or into any waters tributary to such water system any matter or thing which is or may be injurious or deleterious to such water system or to its efficient operation or may or will cause or contribute to a danger to the health of the public in the district.

The above section includes indirect discharge of matter which will cause a danger to the health of the public in the district. By allowing the indirect emission of grey water containing pollutants described below, and given the fact that wind currents will, at times, cause these emissions to fall on Bergen County, the BCUA is violating this section of its controlling regulation.

History of the BCUA relationship with NBLG LLC

The NBLGS plant will require 8.6M gallons of water per day to cool the plant. The planned source of this water is sewage discharge wastewater (effluent) from the Bergen County Utilities Authority. This is grey water that has been sufficiently treated in order to be released into the Hackensack River. The water will come from the BCUA site across the Hackensack River in Little Ferry via a new two-way pipeline. About 2M gallons per day will be returned to the BCUA. The remainder, about 6.6M gallons per day, will be released as steam.

It is expected that this cooling water will be treated with anti-corrosives, algaecides and fungicides and will pick up heavy metals such as lead and mercury from the pipes along with volatile organic compounds, all of which will be heated and mixed into the steam emitted from the plant and will contribute to existing levels of air pollution as well as deposited on the ground and in water bodies with precipitation. While the specific amounts of treatments and emissions are not yet known (this is being requested from the NJDEP as part of their air quality permit assessment), by supporting this use of its grey water, we

believe the BCUA is in violation of its mission to protect the environment and prevent pollution.

The BCUA has been working with NBLG since 2017 to plan the development of the two way pipeline from Little Ferry to the NBLG site in North Bergen. BCUA entered into a mutual confidentiality agreement with NBLG, LLC on January 20, 2017 in order to share confidential information. On February 2, 2017, NBLG LLC sent a letter of intent to the BCUA as a next step towards developing a definitive agreement between the two entities. Among other subjects this LOI states that the parties will cooperate to determine how both the BCUA's new force main sewer line it is building from its Edgewater facility to its Little Ferry facility (required by the NJDEP) and NBLG's power line to New York will use the NYS&W tunnel. The letter also states that BCUA will agree to consider allowing access to its property in Edgewater for construction of NBLG's power cable. It also states that the parties will discuss opportunities to save costs through joint work on excavation of utility rights of way, joint construction contracts, including the examination of a public-private partnership for the construction of the BCUA's force main sewer line. Clearly the relationship between NBLG and the BCUA goes much deeper than a simple buyer/seller transaction.

On January 5, 2018, the BCUA sent its letter of intent to NBLG LLC as an expression of its intent to negotiate a definitive agreement. The letter identifies which parties are responsible for which costs of the project and that the exclusive use agreement for the parties will be for a term of 30 years "which shall be extended to match the life of the NBLG plant." A second LOI from the BCUA on the same date set the rates for NBLG payments to the BCUA based on effluent volumes. A third LOI from the BCUA on the same date set out its intent to enter into a public-private partnership.

On September 25, 2018 the BCUA passed a resolution authorizing the purchase of information from NBLG relevant to its Edgewater Water Pollution Control Facility Project up to a maximum of \$275,000. This information includes title work, environmental reports and geotech investigation reports. This is information already gathered by NBLG that the BCUA also needs for its own purposes and found it beneficial to purchase it instead of developing this information on its own. This resolution was later rescinded (March 28, 2019) as the BCUA and NBLG LLC entered into a Work Product Sharing Agreement on December 17, 2018. On that same date (March 28, 2019) the BCUA passed a resolution authorizing the expenditure of up to \$300,000 to NBLG for information based on the Work Product Sharing Agreement.

The December 17, 2018 Work Product Sharing Agreement defines a process by which both parties will provide the other with information on work they are doing in order to determine if each wishes to participate in the associated costs. The work includes geotechnical investigation, drilling, trenching, environmental sampling, engineering, permitting and related investigations along a route from

the Hudson River to the BCUA facility west of the Hackensack River. It also describes a cost allocation agreement for each of the 6 segments of the joint route they will share.

On November 19, 2018 the BCUA passed a resolution authorizing its legal counsel to negotiate terms of a contract with NBLG. Among the benefits are expense sharing for “the assessment of the integrity of an existing abandoned railway tunnel which is one of the properties required for the alignment of the proposed sanitary sewer force main as part of the Edgewater WPCF project, the analysis and design of a stormwater discharge system for that tunnel, geotechnical investigations on properties included in the proposed alignment of both the sanitary sewer force main and transmission line, the design of a pump station at the Authority’s Little Ferry WPCF required for the delivery of the treated effluent by the Authority to NBLG, the design of the pipeline required for the delivery of necessary permits required by the Authority in connection with both the Edgewater WPCF project and the delivery of treated effluent by the Authority to NBLG.”

We believe the BCUA is violating their own mission to provide services for the citizens of Bergen County by providing the above described support for a private venture that is located outside Bergen County. And we call on The Bergen County Freeholders to stop misleading their constituents by saying Bergen County has no role in this project, and instead follow the leadership of the 50 Bergen County municipalities in passing a resolution to oppose the project. We also call on Bergen County Executive James Tedesco to use his veto power of BCUA meeting minutes to reject any future proposed contract execution between BCUA and NBLG to sell wastewater to the power plant operator.

Don’t Gas the Meadowlands Coalition
4/12/19