

## **29. Criterion 9(J) (Public utility services)**

### **I. Requirements for Issuance of Permit**

Criterion 9(J) provides:

A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

10 V.S.A. § 6086(a)(9)(J).

### **II. Burden of Proof**

The applicant bears the burden of proving compliance with Criterion 9J. 10 V.S.A. § 6086(a).

### **III. Analysis**

The applicant must show each of the following three elements:

1. that necessary public utility facilities and services are or will be available to the proposed project under a duly adopted capital program or plan;
2. that the project will not place an excessive or uneconomic demand on such facilities and services; and
3. that the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

*Re: Richard Bartholomae, #8B0472-EB, Findings of Fact, Conclusions of Law, and Order (Mar. 3, 1994)(granting permit on appeal with additional conditions prohibiting electric heat and requiring off-peak electric water heaters); see also, Re: Twin State Development Assocs, #5W1021-EB, Findings of Fact, Conclusions of Law, and Order (Jun. 11, 1990)(requiring the rotation of building design to increase southern exposure).*

In a 1986 decision, the Environmental Board explained the purpose of Criterion 9(J):

The Board believes that in enacting Criteria 9(F) [energy conservation] and 9(J), as well as Criterion 9(K) dealing with impacts on public investments including generating and transmission facilities, the General Assembly wanted the Environmental Board and District Commissions to take a broad view of the problem of energy conservation and the impact which new developments have on the demand for public utility services. Each project which comes through Act 250 usually has only a minor impact if looked at individually. Cumulatively, however; the impact may be enormous. In deciding this case, the Board is keeping the cumulative impact firmly in mind. Failure to do so would inevitably result in higher additional costs to all rate-payers, as public utilities are forced to speed up their timetables in the construction of new generating and transmission facilities.

*Re: Killington 43 Associates, #IR0522-4-EB, Findings of Fact, Conclusions of Law, and Order at 7 - 8 (Aug. 20, 1986).*