



North Carolina Department of Health and Human Services
Division of Health Service Regulation

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Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

January 14, 2013

Gary S. Qualls
K & L Gates, LLP
P.O. Box 14210
Research Triangle Park NC 27709-4210

Exempt from Review

Facility: Rex Hospital
Project Description: Central energy plant improvements at Main Campus
County: Wake
FID #: 953429

Dear Mr. Qualls:

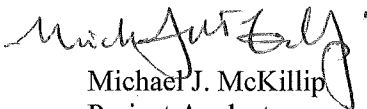
In response to your letter of December 19, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(4). Therefore, you may proceed to offer, develop or establish the above referenced project without a certificate of need.

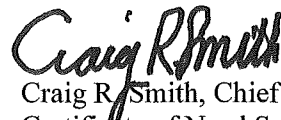
However, you need to contact the Construction Section of the Division of Health Service Regulation to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


Michael J. McKillip
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Construction Section, DHSR

www.ncdhhs.gov • <http://www.ncdhhs.gov/dhsr>
Tel (919) 855-3873 • Fax (919) 733-8139

Location: Edgerton Building, 809 Ruggles Drive • Raleigh, NC 27603
Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704
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K&L | GATES

Mike

K&L Gates LLP
 Post Office Box 14210
 Research Triangle Park, NC 27709-4210

430 Davis Drive, Suite 400
 Morrisville, NC 27560

T 919.466.1190 www.klgates.com

December 19, 2012



Gary S. Qualls
 (919) 466-1182
 (919) 516-2072
 Gary.qualls@klgates.com

VIA HAND DELIVERY

Craig R. Smith, Chief
 Certificate of Need Section
 Division of Health Service Regulation
 N.C. Department of Health and Human Services
 809 Ruggles Drive
 Raleigh, NC 27603

Re: Rex Hospital, Inc. – Central Energy Plant Improvements;
 No Review / Alternative Exemption Letter

Dear Craig:

We are writing on behalf of our client, Rex Hospital, Inc. (“Rex”). Rex is seeking to improve its Central Energy Plant on its main hospital campus. The work is being done regardless of any Certificate of Need (“CON”) projects, pending or future. The purpose of this letter is to request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) confirm that this Central Energy Plant improvement is either not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law or (in the alternative) exempt from review under the CON law’s exemption provisions in N.C. Gen. Stat. § 131E-184.

The Central Energy Plant improvement will consist of relocating four existing chillers and their associated towers from their current location on the main hospital campus to the new location on the same hospital campus. Their current location is adjacent to the loading dock at the back of the hospital. The new location will be at the back of Rex’s existing Central Energy Plant, such that they will be joined with Rex’s existing Central Energy Plant. The new location is farther away from any acute care services. The result of this project is the consolidation of Rex’s existing basic plant utilities.

We believe that the foregoing is not a CON reviewable event for the following reasons. The Central Energy Plant improvement does not trigger any new institutional health

service definition. For instance, it does not entail the construction, development or other establishment of a new health service facility, and does not involve a health service or relate to the provision of a health service. See N.C. Gen. Stat. §§ 131E-176(16)(a), (b). Nor does it constitute the purchase or transfer of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the improvement does not include the offering of any *per se* reviewable services. See N.C. Gen. Stat. § 131E-176(16)(f). Accordingly, the Central Energy Plant improvement does not create a new institutional health service subject to the CON law.

However, even assuming, *arguendo*, that such basic plant improvement were the type to constitute a new institutional health service subject to the CON law, it would nevertheless be exempt from CON review under N.C. Gen. Stat. §§ 131E-184(a)(4) and (a)(6). The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including:

- (4) To provide parking, heating or cooling systems, elevators, or other basic plant or mechanical improvements, unless these activities are integral portions of a project that involves the construction of a new health service facility or portion thereof and that is subject to certificate of need review.
- ...
- (6) To provide any nonhealth service facility or service.

See N.C. Gen. Stat. §§ 131E-184(a)(4) and (a)(6). This Central Energy Plant improvement falls within the scope of Subpart (4) because it is to provide basic plant improvements, which are not related to a project that involves the construction of a new health service facility that is subject to CON review. Likewise, this improvement also qualifies for an exemption under Subpart (6) because the renovation is to provide a nonhealth service (the improvement of the Central Energy Plant by relocating existing chillers and associated towers to the existing Central Energy Plant location).

Based upon the foregoing information, we hereby respectfully request that the Agency confirm that the Central Energy Plant improvement described herein is not subject to CON review for the following alternative reasons: (1) the improvement does not constitute a new institutional health service; (2) the improvement is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(4); or (3) the improvement is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(6).

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Craig R. Smith, Chief

December 19, 2012

Page 3

Please let us know if you need additional information to consider this request. Thank you for your time and consideration.

Sincerely,



Gary S. Qualls