

RULS-AD-1985-90

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Letter to Judge re enclosed Board of Public Utilities Order

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MAR 13 1985

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FILE NO. 3000-03-07

March 12, 1985

RULES - AD - 1985 - 90

The Honorable Eugene D. Serpentelli  
Judge, Superior Court of New Jersey  
Ocean County Court House  
Toms River, NJ 08753

RE: Allan-Deane v. Bedminster Township

Dear Judge Serpentelli:

You will recall that we submitted a proposed agreement to be entered into between Bedminster Township and The Environmental Disposal Corporation regarding sewer allocation in connection with the above entitled case. That agreement provided inter alia that the agreement was subject to approval by the Board of Public Utilities.

Environmental Disposal Corporation forwarded the proposed agreement to their rate counsel which represents then before the State Board of Public Utilities for approval by the Board.

The proposed agreement was also introduced in connection with a Complaint filed against Environmental Disposal Corporation by an office developer (Samuel Sudler and David S. Steiner, Petitioners) alleging that Environmental Disposal Corporation was not giving them sewer capacity until the plant expansion was approved.

I was notified today by Nicholas W. Mattia, Jr., Environmental Disposal Corporation's rate counsel, that the Board of Public Utilities today dismissed the petition of the office developer partially on the grounds that giving the office builder sewer capacity at the expense of The Hills Development Company, which was building low and moderate income housing, would be inconsistent with the agreement submitted to Your Honor. A copy of the opinion is enclosed and I ask you to note the second to last paragraph of the opinion referring specifically to that agreement.

I take this finding to constitute approval by the Board of Public Utilities of the allocation agreement presented to Your Honor and, therefore, believe that Environmental Disposal Corporation is now free to enter into that agreement

The Hon. Eugene D. Serpentelli

March 12, 1985

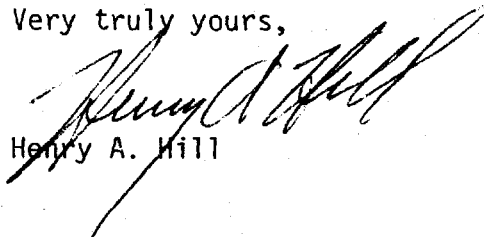
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which has now been recognized and enforced by the Board of Public Utilities.

Please forgive the fact that the copy you received is not perfect. It was telecopied to us by our client, who in turn had it telecopied to them by their B.P.U. attorneys in Newark.

I thought you might want to know that the Board of Public Utilities appears to not only accept the agreement which Environmental Disposal Corporation reached with Bedminster, but has already begun to enforce its terms.

Very truly yours,



Henry A. Hill

HAH:k1p

enclosure

CC: Alfred Ferguson, Esq.  
George Raymond, P.P.  
Kenneth J. Meiser, Esq.  
Joseph L. Basralian, Esq.  
Daniel F. O'Connell, Esq.



State of New Jersey  
BOARD OF PUBLIC UTILITIES  
1100 RAYMOND BLVD.  
NEWARK, NEW JERSEY 07102

LEGAL

IN THE MATTERS OF: )

PLUCKEMIN PLAZA, INC., )  
PETITIONER, )  
V. )

ENVIRONMENTAL DISPOSAL )  
CORPORATION )

DOCKET NO. 845-260

and

SAMUEL SUDLER & DAVID S. )  
STEINER, PETITIONERS, )  
V. )

ENVIRONMENTAL DISPOSAL )  
CORPORATION, )  
RESPONDENT. )

DOCKET NO. 8412-1230

William E. Ozzard, Esq., (Ozzard, Rizzolo, Klein, Mauro and Savo,  
Attys.) on behalf of petitioner Pluckemin Plaza, Inc.

Bruce H. Snyder, Esq., (Lasser, Hochman, Marcus, Guryan and Kuskin,  
Attys.) on behalf of petitioners Samuel Sudler and David S. Steiner

Nicholas W. Mattia, Jr., Esq. and Kenneth P. Westreich, Esq.,  
(Conway and Reiseman, Attys.) on behalf of respondent,  
Environmental Disposal Corporation

BY THE BOARD:

On May 2, 1984, Pluckemin Plaza, Inc. (hereinafter Pluckemin or petitioner), the assignee of a contract to purchase a 23-acre parcel of land located in the Township of Bedminster, Somerset County, petitioned the Board to enter an order which would, inter alia, require the Environmental Disposal Corporation (hereinafter EDC or respondent) to reserve 22,000 gallons per day (gpd) of sewerage capacity to Pluckemin's use in connection with its intended development of the foregoing property. By Decision and Order entered in Docket No. 816-552 on July 29, 1981, municipal consents of the Townships of Bedminster and Bernards, which consents awarded EDC a franchise to provide sewer service to certain portions of each respective community, had been approved by the Board. In said Decision and Order of July 29, 1981, the Board also approved EDC's issuance of 500 shares of no par value common stock of aggregate stated value of \$50,000, to the Hills Development Company (hereinafter Hills). Hills, the owner of EDC pursuant to the foregoing Decision and Order, is also the owner of approximately 1,500 acres of land located in the Township of Bedminster, upon which it intends, and has received necessary authorization, to construct approximately 450,000 square feet of commercial and/or office structures and approximately 3,500 units of housing within the next four years.

By answer filed on June 8, 1984, EDC averred that of its present in place capacity of 850,000 gpd, 50,000 gpd has been allocated to the Township of Bedminster to meet franchise obligations embodied in the municipal consent approved as aforesaid by the Board, and that the remaining 800,000 gpd has been allocated to Hills, in connection with its development of the property referred to hereinabove. Respondent maintained therefore, that it would be unable to allocate any capacity to Pluckemin in that all existing capacity had thentofore been allocated.

On July 25, 1984, a pre-hearing conference was convened at the offices of the Board whereat petitioner and respondent requested the opportunity to resolve their differences amicably. After subsequent conferences, petitioner and respondent filed an executed stipulation with the Board dated January 9, 1985, through which respondent agreed to allocate to petitioner's use up to 22,000 gpd of sewerage capacity and to enter into an appropriate contract therewith for the provision of such service. Said stipulation was expressly conditioned upon the Board's acceptance of a revision to respondent's tariff which revision was incorporated into and made a part of the stipulation. The proposed revision provided in relevant part that

... under no circumstances will the utility (EDC) be permitted or required to allocate capacity to a prospective customer where the requested capacity does not exist on the utility's system ...

During the pendency of negotiations between Pluckemin and EDC, on December 3, 1984, Samuel Sudler and David S. Steiner (hereinafter Sudler/Steiner) petitioned the Board to enter an order against EDC enjoining it from reserving capacity to Hills or Pluckemin; requiring EDC to reserve 41,000 gpd to its use; declaring any contract entered into by EDC through which it reserved capacity for use outside the franchise area to be ultra vires; voiding any contract through which capacity was reserved and will not be used in the near future; voiding any settlement between EDC and Pluckemin; and, finally, granting such other relief as the Board deemed just and proper. Respondent's answer to the Sudler/Steiner petition, together with affirmative defenses thereto, a Motion to Dismiss said petition and a Brief in support of said Motion, were filed with the Board on January 5, 1985. On February 5, 1985, an Affidavit in opposition to the Motion to Dismiss was filed by Sudler/Steiner and, on February 11, 1985, a letter memorandum in opposition thereto by EDC. The Board concludes that the substantial documentation submitted by the parties to the above captioned matters in support of their respective positions provides ample basis upon which to render a decision in these matters.

As related hereinabove, Hills intends to develop approximately 1,500 acres of land within the franchise granted EDC by the Board. Toward that end Hills has acquired the property which it intends to develop, has obtained approvals from the Township of Bedminster prerequisite to such development and has, in fact, commenced construction. Pluckemin, which intends to develop a smaller parcel of land within EDC's franchise, although yet remaining the assignee of a contract to purchase said land, has obtained preliminary site plan approval from the Township of Bedminster to develop the property subject to said contract. Sudler/Steiner, the contract purchasers of land within the franchise, have yet to obtain approval from the Township of Bedminster to develop the property which they aver they intend to acquire.

A review of the Sudler/Steiner petition reveals that it requests the Board to award relief to these particular petitioners of the kind sought by the other two developers, namely Hills and Pluckemin. While suggesting that any allocation or reservation of capacity to the use of Hills or Pluckemin would be impermissible, Sudler/Steiner request that the Board direct EDC to allocate and reserve unto them 41,000 gpd of capacity. We are of the opinion, and so FIND, that Sudler/Steiner have failed to demonstrate that they are more entitled to an allocation or reservation of EDC's limited capacity than Hills or Pluckemin. In short, as against Sudler/Steiner, Hills, which owns the property which it intends to develop, has received approval to develop it and has commenced the development thereof, should receive an allocation of capacity. Likewise, Pluckemin, which has obtained site plan approval from the Township of Bedminster to construct its project, is more favorably situated than are Sudler/Steiner and should have capacity dedicated to its use before such capacity is allocated to Sudler/Steiner. We are of the opinion, therefore, that respondent's contention that the Sudler/Steiner petition is premature, is correct, and GRANT respondent's Motion to Dismiss on that basis.

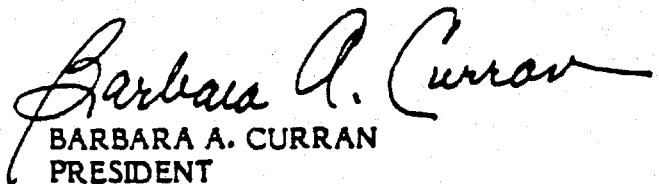
Accordingly, based upon the foregoing, the Board HEREBY ACCEPTS the stipulation entered into between EDC and Pluckemin and HEREBY DISMISSES the petition filed by Sudler/Steiner without prejudice to renew the same in accordance with this Decision and Order.

The Board notes that this determination is consistent with an agreement reached between EDC and the Township of Bedminster and submitted to the Honorable Eugene D. Serpentelli in the matter entitled: Allen Deane v. Township of Bedminster, et al, Docket No. L-36896-70 P.W. Said agreement effects a settlement of litigation filed pursuant to the Supreme Court's recent "Mount Laurel II" decision, So. Burlington County, N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 (1983) and calls in relevant part for EDC to expand its sewerage capacity to 1,800,000 gpd. Pursuant to the terms thereof, until such capacity is in place, EDC must allocate its available capacity, on a pro rata basis, to residential housing constructed in compliance with Bedminster's "Mount Laurel obligations"; next, to any residential housing constructed therein but not constructed pursuant to said "obligations"; and, lastly, to any commercial construction for which no contract with EDC to provide sewer service presently exists. Sudler/Steiner should therefore renew their petition at a time when EDC has expanded its system through the addition of such capacity as will enable it to provide service to them, in accordance with the foregoing agreement in the event the same is accepted by Judge Serpentelli. Failing acceptance of same, Sudler/Steiner may, of course, renew their request for service when EDC has expanded its system in accordance with representations made in its pleadings filed in the instant docket, Docket No. 845-260. In such event, the aforementioned restrictions on allocation would not apply.


Finally, on December 21, 1984, EDC petitioned the Board to accept a complete revision of its tariff, Docket No. 8412-1286. The within determination is naturally without prejudice to any such review. It is so ORDERED.

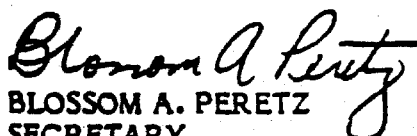
DATED: March 8, 1985

BOARD OF PUBLIC UTILITIES  
BY:

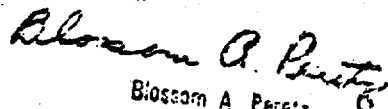
  
BARBARA A. CURRAN  
PRESIDENT

ATTEST:

  
GEORGE H. BARBOUR  
COMMISSIONER

  
BLOSSOM A. PERETZ  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utility Commissioners.

  
Blossom A. Peretz  
Secretary