



Agenda Date: 04/27/09  
Agenda Item: 9A

**State of New Jersey**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
[www.nj.gov/bpu](http://www.nj.gov/bpu)

IN THE MATTER OF CJS INVESTMENTS, INC. )  
PETITION FOR EXEMPTION ) ORDER DENYING EXEMPTION  
FROM MAIN EXTENSION RULES ) DOCKET NO: EO09030209  
N.J.A.C. 14:3-8.8(b)(2) )

(SERVICE LIST ATTACHED)

BY THE BOARD<sup>1</sup>:

By this Order, the Board of Public Utilities ("Board") considers a request by CJS Investments – ("Petitioner") for consideration of an exemption from the Main Extension Rules, N.J.A.C. 14:3-8.1 et seq. ("Main Extension Rules") pursuant to N.J.A.C. 14:3-8.8(b)(2)<sup>2</sup>. This section of the Rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth due to extreme hardship.

**FACTUAL BACKGROUND**

The Petitioner is a commercial and residential real estate development company headquartered in Farmingdale, NJ. The Petitioner went into contract with this project in July 2003 and planned to construct a 15 unit residential subdivision known as "Hamilton Estates" in Hamilton Township, New Jersey (Block 2732, Lot 7.01, 7.02, 7.03, 7.04, and 7.05) in an area not designated for growth. The Petitioner now seeks relief from the rules that required the Petitioner to pay the entire cost of extending electric service to the subdivision. In 2007 Public Service Electric and Gas Company estimated the cost of providing service to this subdivision at approximately \$150,902.06 excluding the cost of trenching. This amount does not include the cost for providing gas service to the project.

Petitioners filed a petition for an extraordinary hardship with the Board on July 17, 2007. No construction has been started but the Petitioner remediated an acidic soil condition inherited from the prior owner's mining activities. The environmental remediation work started in 2004 and the NJDEP issued a "No Further Action" letter on June 28, 2007.

<sup>1</sup> Commissioner Frederick Butler did not participate in this matter.

<sup>2</sup> Petitioner initially filed for an exemption pursuant to N.J.A.C. 14:3-8.8(a)(7). Effective May 19, 2008, the Board amended its Main Extension Rules and moved the relevant exemption from N.J.A.C. 14:3-8.8(a)(7) to N.J.A.C. 14:3-8.8(b)(2).

Petitioner's property is located in a non-growth area, PA 4- Rural Planning area.

To obtain an exemption based on an extraordinary hardship, N.J.A.C. 14:3-8.8(i) provides that a person must demonstrate to the Board that all of the following criteria are met:

- 1 Compliance with this subchapter would cause an extraordinary hardship. *Factors the Board will consider when deciding whether an extraordinary hardship exists include, but are not limited to, the cost of the extension, the degree of financial hardship created by the cost of the extension, and the impact of the development served by the extension on land use patterns. However, financial hardship alone shall not constitute a basis for this exemption;*<sup>3</sup>

Here Petitioner stated that during their due diligence analysis of this potential development site in 2003, the Board's main extension rules were not yet effective and therefore Petitioner did not factor in the costs of extending regulated entity service into this project. In a letter dated August 22, 2007 Petitioner recognized that "... this financial hardship alone will not necessarily be sufficient grounds for the Board to grant an exemption...."

2. The extraordinary hardship results from unique circumstances that do not apply to or affect other projects in the region;

Here Petitioner argues that this hardship is unique as other projects in the region are not similarly affected because the "balance of undeveloped land in Hamilton that falls in the Non-Growth Area is not zoned for residential uses" but the Hamilton Estates property is zoned by Hamilton Township for residential use. Additionally, Petitioner's project was delayed significantly by environmental remediation to the site due to a prior owner's mining activities.

3. The unique circumstances arise from the project itself and not from the circumstances or situation of the regulated entity or its customers;

Here Petitioner states that prior mining operations on the site left large areas of highly acidic soils which were eroding toward the down gradient water courses. The NJDEP issued a Notice of Violation dated June 4, 2003, which was inherited by Petitioner upon execution of the contract. Petitioner states that it expended \$50,000 remediating the site and that it will be importing top soil, effectively capping the site. Petitioner states that these improvements "amount in significant public good."<sup>4</sup>

4. Neither the extraordinary hardship nor the unique circumstances are the result of any action or inaction by the regulated entity, its shareholders, or its customers.

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<sup>3</sup> N.J.A.C. 14:3-8.8(i) was amended in May 2008, after Petitioner filed its petition, to include the italicized language. On August 21, 2008, Petitioner was given an opportunity to supplement its Petition and submit any additional documents regarding the applicability of the amendments. To date, no supplemental documents have been submitted.

<sup>4</sup> Petitioner's July 17, 2007 petition stated that the environmental remediation performed on the site was a public good that should be considered by the Board in analyzing its extraordinary hardship petition. On August 21, 2008, via letter, the Board staff requested that Petitioner supplement its petition if it wished to seek an exemption for significant public good, pursuant to N.J.A.C. 14:3-8.8(b)(1). Pursuant to Petitioner's request, the time to file such supplemental documents was extended until November 4, 2008. To date, Petitioner has not filed any additional documents or requested an additional extension. Therefore, this exemption was not considered by the Board.

Here Petitioner states it complied with the wishes of Hamilton Township for maximizing the open space areas of the proposed development by agreeing to develop only 15 units instead of the 30 units that the zoning could have allowed. Petitioner argues that it had developed 30 lots, the per lot cost of extending electric service would be half the cost they are currently required to pay.

## **DISCUSSION**

Although Petitioner commenced activity on this project in 2003, the Extensions to Provide Regulated Services Rules, specifically N.J.S.A. 14:3-8.8(a)(4) and (g), states:

“If construction of an extension, or the installation of any temporary service, has begun prior to March 20, 2005, or if a regulated entity has committed in writing to pay a specific dollar amount for an extension, prior to March 20, 2005, the extension shall be exempt. A subdivision approval, building permit, zoning variance, or verbal or nonbinding communication with a regulated entity shall not, by itself, provide sufficient grounds to exempt an extension under this subdivision.”

Neither Petitioner’s obtaining the local zoning approvals nor its obtaining a “Will-Serve” letter from the utilities that did not state any fees or costs, prior to March 20, 2005, meet these rule requirements. Therefore Petitioners do not meet this exemption requirement.

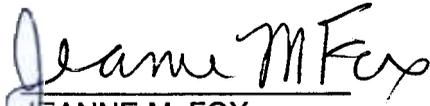
As to Petitioner’s claim that the per lot cost of the extension would be halved had it built 30 units, rather than agreeing to limit its development to 15 units, Board Staff noted that this is not necessarily true as there would be additional costs for each additional unit, such as meter and connection costs for each unit.

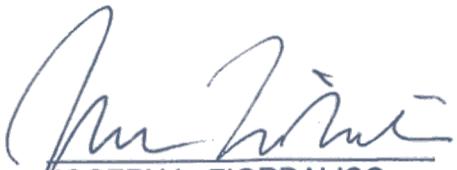
After reviewing the petition, the Board FINDS that not all of the above criteria for a project where compliance with the Main Extension Rules would cause extraordinary hardship have been met. Specifically, the Board FINDS, that Petitioner’s hardship is exclusively financial and that as noted in past cases, financial hardship alone is insufficient grounds for the granting of an exemption based on an extraordinary hardship at N.J.A.C. 14:3-8.8(i). See In the Matter of Evelyn DeLarentis Petition for Exemption from Smart Growth Rules, Non-Docketed Matter, (September 13, 2005). The Board proposed and adopted the Main Extension Rules in accordance with the Administrative Procedure Act. The Board notes that State Agencies periodically change existing rules and propose new rules that can and do impact various industries. In general, this is risk that developers assume. As discussed above the first criteria is not met.

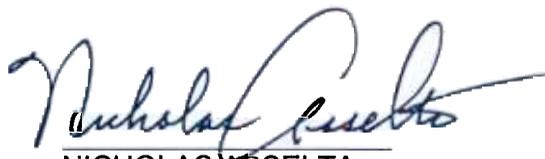
Therefore, the Board HEREBY DENIES the petition for an exemption from the Main Extension Rules pursuant to N.J.A.C.14:3-8.8(b)(2) for an extension of electric service to a 15 unit residential subdivision known as "Hamilton Estates" in Hamilton Township (Block 2732, Lot 7.01, 7.02, 7.03, 7.04, and 7.05), New Jersey. The Board HEREBY ORDERS that the distribution of costs for this extension shall be governed by the requirements at N.J.A.C. 14:3-8.6 for extensions that serve an area not designated for growth.

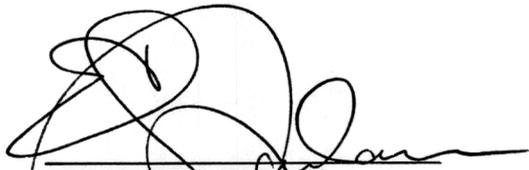
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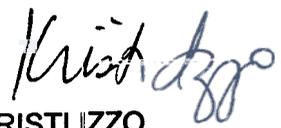
BOARD OF PUBLIC UTILITIES  
BY:

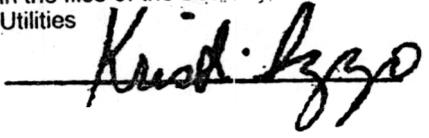
  
JEANNE M. FOX  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

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


**SERVICE LIST**

Docket No. EO09030209

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