



Agenda Date: 8/19/15
Agenda Item: 9C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

IN THE MATTER OF MINUTELLA et al. vs. JERSEY)	ORDER
CENTRAL POWER AND LIGHT; FIRST ENERGY)	
CORPORATION; NEW JERSEY NATURAL GAS)	
COMPANY; NEW JERSEY RESOURCES)	
CORPORATION AND ABC COMPANIES NOS. 1-10)	DOCKET NO. EC15060657
)	
And)	
)	
IN THE MATTER OF HARVEY et al. vs. JERSEY)	
CENTRAL POWER AND LIGHT; FIRST ENERGY)	
CORPORATION; NEW JERSEY NATURAL GAS)	
COMPANY; NEW JERSEY RESOURCES)	
CORPORATION AND ABC COMPANIES NOS. 1-10)	DOCKET NO. EC15060658

Parties of Record:

Hugh M. Turk, Esq., Plaintiffs' attorney
Kevin H. Marino, Esq., on behalf of New Jersey Natural Gas and New Jersey Resources Corporation
Stephen A. Rudolph, Esq., on behalf of Jersey Central Power and Light and FirstEnergy Corporation

BY THE BOARD: ¹

On October 14, 2014, Susan Minutella and other named plaintiffs filed a complaint, In the Matter of Susan Minutella, Ronald Mavus, and Linda Pompliano; Don Smith; Linda Seufert and Anthony Marcantonio; Joan Bechtle; Toni Albanese and James Albanese; Frank Delle Donne and AnneMarie Delle Donne; Lorraine Kosinski and Stanley Kosinski; Joseph Sacco and Davida Sacco; Durbin Don McDermott and Madeline McDermott; Sally Gillis and Bob Gillis; Irene Moyer; Janice Diana and Wayne Diana , FirstEnergy Corporation; New Jersey Natural Gas Company; New Jersey Resources Corporatoin and ABC Companies Nos. 1-10, Docket No. OCN-L-2955 ("Minutella"). On October 27, 2014, E.J. Harvey, Jr. and other named plaintiffs filed a complaint, E.J. Harvey, Jr.; June Squillaro and Joseph Squillaro; Vincent D. Piperi; Christine O'Hagan and Michael O'Hagan; Joseph Keslo and Cathy Keslo; Marianne Jones;

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

Kenneth Flowers and Cindy Flosers; Lily Hawryluk; Sandy Turner; Cheryl Lucky; and Dalel Parisi vs. Jersey Central Power and Light; First Energy Corporation; New Jersey Natural Gas Company; New Jersey Resources Corporation and ABC Companies Nos. 1-10, Docket No. OCN-L-3256-14 (“Harvey”). Both matters were filed in the Law Division, Superior Court – Ocean County. The matters have not been consolidated. In both actions, plaintiffs are property owners and/or lessees in a neighborhood in the Township of Brick known as Camp Osborn. Plaintiffs seek to recover compensation for damages and destruction of their real and personal property by the fire or fires occurring on October 29, 2012 from Superstorm Sandy. Plaintiffs contend that the fire or fires and resulting damages and destruction were caused by the negligence, gross negligence, carelessness, and recklessness of defendants relating to their failure to de-energize electric lines and suspend the provision of natural gas services during the storm. The allegations in the complaints are virtually identical.

Defendants New Jersey Natural Gas Company and New Jersey Resources Corporation moved in both actions for entry of orders dismissing Plaintiffs’ complaints or in the alternative referring certain issues to the New Jersey Board of Public Utilities (“BPU”) pursuant to the doctrine of primary jurisdiction. By Order dated March 30, 2015, the Honorable Robert A. Fall, J.S.C., denied the motions to dismiss, but granted the motions to refer the matters to the BPU pursuant to the doctrine of primary jurisdiction. The Order further stayed the Superior Court actions pending a determination by the BPU as to whether it intends to exercise jurisdiction as to factual determinations as to any of the issues raised in the complaints.

The doctrine of primary jurisdiction applies

when a case is properly filed in the New Jersey Superior Court but the court declines original jurisdiction, referring specific issues to the appropriate administrative body. The court gives deference to the administrative body’s interpretation of its own regulations and findings of fact on particular issues that are within the special competence of the agency pursuant to applicable statutes. Essentially, the court retains jurisdiction but defers action until the agency has reviewed the case and employed its expertise. That doctrine is especially important for promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties.

Magic Petroleum Corp. v. Exxon Mobil Corp., 218 N.J. 390, 405 (2014) (citations omitted) (internal quotation marks omitted).

The BPU has general supervision and regulation of and jurisdiction and control over public utilities. N.J.S.A. 48:2-13(a). The Legislature has endowed the BPU with broad powers to regulate public utilities. In re Pub. Serv. Elec. & Gas Co.’s Rate Unbundling, 167 N.J. 377, 384 (2001) (internal citations and quotations omitted). The Board has jurisdiction of all services necessary for the transmission and distribution of gas electric service. N.J.S.A. 48:2-13(d). The Board has the authority to require any public utility to furnish safe, adequate and proper service. N.J.S.A. 48:2-23. Judicial deference to administrative agencies stems from the recognition that agencies have specialized expertise. In re Adoption of Amendments to Water Quality Management Plans, 45 N.J. Super. 571, 583 (App. Div. 2014). In this case, the Board has the statutory authority as well as expertise to consider whether New Jersey Natural Gas Company and/or Jersey Central Power & Light failed to provide safe, adequate and proper service under the circumstances then existing to the Minutella and Harvey plaintiffs in the underlying action.

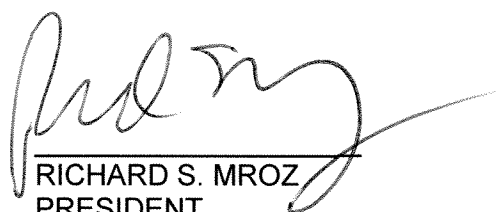
Therefore, the Board accepts primary jurisdiction in order to consider that issue or any other that it deems appropriate.

The Board, having reviewed the Court's Order and the preliminary documents it has received from the parties, **HEREBY FINDS** issues in the Complaints that are within the Board's jurisdiction. As such, the Board accepts primary jurisdiction, will review the matter referred pursuant to Judge Fall's Order and will advise the parties how this matter will proceed.

This Order shall be effective on August 29, 2015.

DATED: 8/19/15

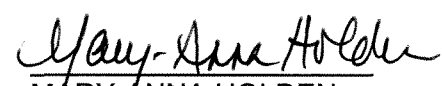
BOARD OF PUBLIC UTILITIES
BY:




RICHARD S. MROZ
PRESIDENT



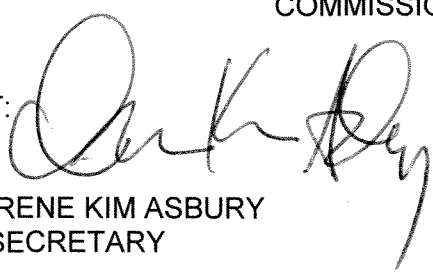
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MARY-ANNA HOLDEN
COMMISSIONER

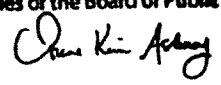


DIANNE SOLOMON
COMMISSIONER

ATTEST: 

IRENE KIM ASBURY
SECRETARY

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



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