



Agenda Date: 7/1/09
Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MICHAEL J. KELSEY, Petitioner)	ORDER REJECTING INITIAL DECISION AND REMANDING MATTER
)	
v.)	
)	
JERSEY CENTRAL POWER & LIGHT Respondent)	BPU DOCKET NO. EC08060387U OAL DOCKET NO. PUC 07995-08

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition filed with the Board of Public Utilities ("Board" or "BPU") on June 3, 2008, Michael J. Kelsey ("Petitioner") requested a formal hearing regarding charges by Jersey Central Power & Light Company ("Respondent") for utility services.

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge ("ALJ") Gail M. Cookson.

On October 16, 2008, ALJ Cookson granted Petitioner's request that the matter be placed on the inactive list for six months due to Petitioner's inability to participate for medical reasons. After the matter came off the inactive list in April 2009, Petitioner again requested a three-month adjournment for medical reasons and submitted a doctor's note recommending that Petitioner refrain from court appearances or preparations for three months. By letter dated May 15, 2009, ALJ Cookson requested that Petitioner provide further information on his medical condition for the ALJ's *en camera* review. Pending a submission of additional information and a review by the ALJ, the adjournment was denied and Petitioner was advised to consider obtaining Respondent's consent for an indefinite adjournment by placing the amount in dispute in an escrow account, pursuant to N.J.A.C. 14:3-7.6.

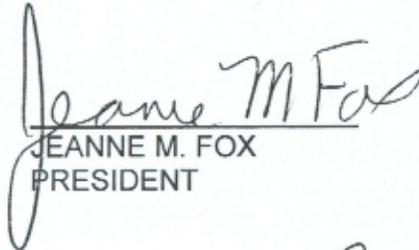
Petitioner did not submit additional medical information, and ALJ Cookson, in an Initial Decision issued on May 28, 2009, dismissed the petition without prejudice, allowing Petitioner to re-file when he is able to fully participate in the proceedings. The matter was transmitted to the Board on May 29, 2009.

On or about June 8, 2009, Petitioner resubmitted to the Board his petition and requested that the petition be considered re-filed pursuant to ALJ Cookson's Initial Decision. In his submission, Petitioner has indicated that he is ready and physically able to prosecute his case.

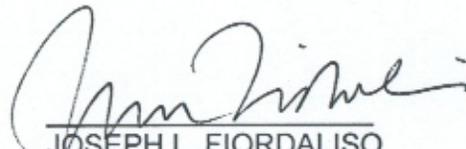
Therefore, upon review of the record and based on the foregoing, the Board HEREBY REJECTS the Initial Decision and remands this matter to the Office of Administrative Law for the scheduling and conduct of any hearings and conferences deemed appropriate by the Administrative Law Judge.

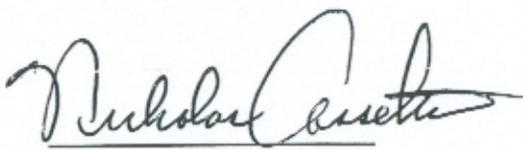
DATED: 7/1/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

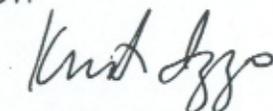

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

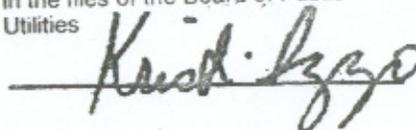

NICHOLAS ASSELTA
COMMISSIONER


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



MICHAEL J. KELSEY
v.
JERSEY CENTRAL POWER & LIGHT

BPU DOCKET NO. EC08060387U
OAL DOCKET NO. PUC 07995-08

SERVICE LIST

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Hon. Gail M. Cookson, ALJ
Office of Administrative Law
33 Washington Street
Newark, New Jersey 07102

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State of New Jersey
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NEWARK, N.J.

CMS
BESLOW
RPA
MILLER HOLLAND
CAMPBELL, J
FORD-WILLIAMS (2)

INITIAL DECISION
DISMISSAL
WITHOUT PREJUDICE

OAL DKT. NO. PUC 07995-08
AGENCY DKT. NO. EC08060387U

MICHAEL J. KELSEY,

Petitioner,

v.

JERSEY CENTRAL POWER & LIGHT CO.,

Respondent.

Michael J. Kelsey, appearing pro se

Michael J. Connolly, Esq., for respondent Jersey Central Power & Light Co.
(Morgan, Lewis & Bockius, LLP attorneys)

BEFORE GAIL M. COOKSON, ALJ:

This matter was filed as a request for a hearing on a billing dispute by the petitioner on May 28, 2008, and transmitted to the Office of Administrative Law on July 16, 2008, to be heard as a contested matter. I attempted to schedule this matter at that time for telephonic and in-person conferences but the petitioner has been unable to attend due to health reasons. Petitioner then requested that the matter be held on the inactive list for six months on recommendation of his physician. While respondent

objects, I ordered that this matter should be placed on the inactive list for six months, until April 15, 2009.

After the case came off the inactive list, respondent attempted to conduct discovery in anticipation of the plenary hearing, which I scheduled for August 10, 2009. Petitioner moved again for an adjournment or for the case to be placed again on the inactive list by letter which repeated his earlier requests in virtually identical language and with an identical, one-sentence letter from a different physician stating that he should be excused from all court appearances and court preparations for three months. On May 15, 2009, I noticed the parties that I would not adjourn the August hearing in part because it appeared that petitioner would have the time and ability to prepare by then and in part because there was no substantive support to his request. Nevertheless, I provided Mr. Kelsey with an additional avenue of relief, namely, I requested that -

[H]e submit to my office for my *en camera* review (*i.e.*, without copy to Mr. Connolly) more information on the nature of his condition and treatment that he is claiming precludes his ability to make an appearance at the Office of Administrative Law and/or to even undertake document photocopying. I trust all parties to keep in perspective that this matter involves a bill dispute in the approximate amount of \$1,784; it is not a criminal or civil court proceeding but rather an administrative forum for the adjudication of public utility consumer complaints.

Rather than submit any medical documentation, petitioner opted to just reiterate his personal opinion of his condition and abilities in a manner similar to his submissions over the last year. I received no additional or new documentary supplementation.

I have concluded that there is just cause, under all the circumstances, to dismiss this petition without prejudice to Mr. Kelsey's right to re-file it when he is able to participate in the requisite pre-hearing, settlement, discovery and hearing proceedings. Until he can pursue his claim, it is not fair to JCP&L to keep this claim open or to maintain it on the docket at the Office of Administrative Law.

It is **ORDERED** that the matter be deemed dismissed without prejudice. Petitioner may re-file his complaint with the Board of Public Utilities at such time as he is able to fulfill his responsibilities to properly prosecute said claim without an assertion of laches or any period of limitations being asserted against him, but with all other rights, remedies, defenses or counterclaims fully preserved.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Gail M. Cookson

May 28, 2009 _____

DATE

GAIL M. COOKSON, ALJ

Date Received at Agency: 5/28/09

Floyd D. Langford

Date Mailed to Parties:

id