



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

DIVISION OF ENERGY

AVON HOTEL CORPORATION t/a THE )  
PARKER HOUSE, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JERSEY CENTRAL POWER & LIGHT COMPANY )  
and FIRST ENERGY CORPORATION, )  
 )  
Defendants. )

ORDER RETURNING THE  
CASE TO SUPERIOR COURT

DOCKET NO. EC05090786

(SERVICE LIST ATTACHED)

BY THE BOARD:

By an August 4, 2005 letter to the Board, Avon Hotel filed for the Board's "review" the following:

(i) the June 1, 2005 Order of the Honorable Jamie S. Perri, J.S.C., by which the instant matter was "referred to [the Board] to determine the regulatory issues raised in plaintiff's Complaint"; (ii) the June 24, 2004 Complaint and Jury Demand filed by Plaintiff Avon Hotel in the Superior Court of New Jersey, Law Division, Monmouth County; and (iii) the August 20, 2004 Answer filed by Defendants Jersey Central Power & Light Company and First Energy Corporation ("JCP&L"). The Order indicates that JCP&L had asked the court to transfer the case to the Board "for lack of jurisdiction." Avon Hotel's filing with the Board is attached hereto as Exhibit 1.

The complaint alleges that on three occasions in 2003 (June 14 around 9:30 p.m., June 27 around 10:00 p.m., and July 4 around 5:00 p.m.), "the electrical wires leading to the Parker House (the Parker House is located on Beacon Boulevard in the Borough of Sea Girt, Monmouth County) from the Jersey Central Power & Light pole caught fire, burned, and dropped to the ground," which resulted in a blackout and forced the Parker House to shut down for business until the following day, thereby causing the Parker House to lose business, income, food, etc. See Complaint, at 2-5.

Avon Hotel alleges that after JCP&L had repaired the wires, power was restored "some time after midnight" as to the June 14 and June 27, 2003 blackouts, and "the early morning hours" as to the July 4, 2003 blackout. Avon Hotel states that JCP&L finally replaced the electric wires after the July 4 fire and that no further problems with the wires have since occurred.

Accordingly, Avon Hotel asserts that after the first fire, JCP&L "should have completely replaced the electrical wires" from the JCP&L pole to the Parker House, which would have prevented the second and third blackouts. Instead, Avon Hotel avers, JCP&L "simply made a repair," and as a result of "the inadequate repair," the fire of June 27 ensued. Id. at 3-5.

Avon seeks damages for economic injuries incurred allegedly due to JCP&L's negligent maintenance of its electric wires to Avon's premises, claiming that the "burning of the wires was caused by the negligence of [JCP&L]." Id. at 3. In its Answer, JCP&L generally denies "each and every allegation of the Complaint." See Answer, at 1.

The case was never transmitted to the Office of Administrative Law, because the parties had indicated to the Staff of the Board of Public Utilities ("Staff") that they would try to settle the case. Avon Hotel is claiming several losses, including loss of income of \$82,204, operation loss of \$20,000, and an unknown amount of loss of reputation and business. See Analysis of Income Losses and Expenses, attached to Exhibit 2.

By a June 1, 2006 letter to counsel for Avon Hotel and JCP&L, Staff, by its attorney, Office of the Attorney General ("OAG"), asked the parties to submit "all relevant materials" within their possession and control, preferably a joint submission, to help the Board address the court's referral, i.e., to determine whether JCP&L had provided safe, adequate, and proper service to the Parker House for the relevant period. See N.J.S.A. 48:2-23; N.J.A.C. 14:3-3.1 et seq. However, in that letter Staff again encouraged the parties to try to settle the case.

In response to Staff's June 1, 2006 request for discovery, Avon Hotel provided, under a cover letter dated June 5, 2006, copies of the following documents from the Superior Court case: (i) Avon Hotel's answers to JCP&L's discovery requests; (ii) March 17, 2005 Electric Service Evaluation of Joseph A. Greco, P.E., submitted on behalf of Avon Hotel; (iii) photographs of the relevant JCP&L power lines; and (iv) Avon's income-loss analysis. Said documents are attached hereto as Exhibit 2.

JCP&L, in turn, by letter dated June 28, 2006, produced a copy of its answers to Avon Hotel's interrogatories in the Superior Court case, which contains very little information about the blackouts. Also, the letter states that "both parties are making steps towards fruitful settlement negotiations. In particular, JCP&L is awaiting proofs to support the alleged damages claimed in plaintiff's March 2, 2006 analysis." None of the information produced by JCP&L to Staff indicates what might have caused the blackouts. A copy of JCP&L's production of documents is attached hereto as Exhibit 3.

In his March 17, 2005 Electric Service Evaluation submitted on behalf of Avon Hotel, Joseph A. Greco, P.E., concludes as follows:

JCP&L increased the capability of their transformer bank to provide current without increasing the service feeder conductor size. These three-phase conductors were also subjected to unbalanced current which caused the neutral/ground conductor to burn to the point of failure at one point, while the general overcurrent conditions to which the phase conductors were subjected caused them to fail as shown in the photos. The fact that instances of failure ceased when the utility (JCP&L) replaced the existing #2/0 phase conductors and #1/0 neutral/ground with 2 #4/0 conductors per phase and neutral/ground supports this conclusion that the original conductors were grossly undersized.

[Id. at 5].

On September 21, 2006, Avon Hotel filed a motion with the Board to dismiss the referral to the Board for lack of jurisdiction. A copy of Avon Hotel's motion papers is attached hereto as Exhibit 4. By electronic mail to the OAG dated December 21, 2006, JCP&L confirmed that it would not be filing opposition to Avon Hotel's motion. A copy of said correspondence is attached hereto as Exhibit 5. By Avon Hotel's January 16, 2007 letter to the parties, it was confirmed that JCP&L would not oppose Avon Hotel's motion. A copy of said letter is attached hereto as Exhibit 6.

### **DISCUSSION AND FINDINGS**

Primary jurisdiction is defined as the circumstance in which a court declines original jurisdiction and refers to the appropriate body those issues which, under a regulatory scheme, have been placed within the special competence of an administrative body. Muise v. GPU, Inc., 332 N.J. Super. 140, 158 (App. Div. 2000), quoting Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 269 (1978). In Boldt v. Correspondence Management, Inc., 320 N.J. Super. 74 (App. Div. 1999), the court described the four factors to be considered for primary jurisdiction as follows:

- 1) whether the matter at issue is within the conventional experience of judges;
- 2) whether the matter is peculiarly within the agency's discretion, or requires agency expertise;
- 3) whether inconsistent rulings might pose the danger of disrupting the statutory scheme; and
- 4) whether prior application has been made to the agency.

[Id. at 85, citing IPCO Safety Corp. v. WorldCom, Inc., 944 F. Supp. 352, 356 (D.N.J. 1996)].

See also Boss v. Rockland Elec. Co., 95 N.J. 33, 41 (1983) (regarding an electric utility's tree removal program, which involved the utility's clearing the easement area of any trees that had the capacity to grow to the height of the utility's wires, it was stated that when the determination of the legal issue must be preceded by the taking of the necessary evidence and the making of the necessary factual findings, it is best done by the administrative agency specifically equipped to inquire into the facts.), citing Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 140 (1962). The Boss Court also noted that under N.J.S.A. 48:2-23, it is the Board that must see that safe, adequate, proper and environmentally sound service is rendered by a utility at rates that are reasonable. 95 N.J. at 41.

Because JCP&L does not oppose Avon Hotel's motion to dismiss, the Board will not address the question of primary jurisdiction. It is unnecessary for the Board to opine as to jurisdiction, especially given that this case was referred to the Board at least two years after JCP&L had replaced the wires in issue.

Accordingly, the Board **HEREBY FINDS** that:

JCP&L has raised no objections to Avon Hotel's motion to dismiss and return the matter to the Superior Court.

Accordingly, the Board HEREBY ORDERS that:

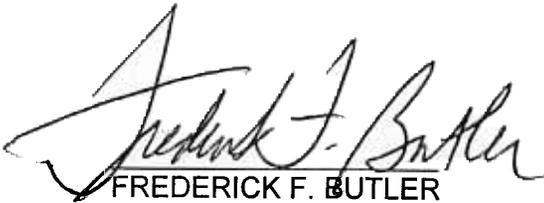
- 1 Avon Hotel's motion to dismiss and return the matter to the Superior Court is granted.
2. Avon Hotel shall submit a copy of this Order to the Honorable Jamie S. Perri, J.S.C., Superior Court of New Jersey, Monmouth County, Law Division.

DATED: 3/22/07

BOARD OF PUBLIC UTILITIES  
BY:



JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER



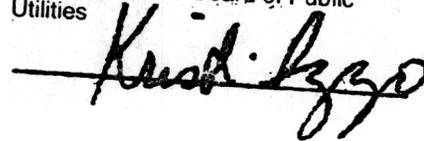
CHRISTINE V. BATOR  
COMMISSIONER

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



Avon Hotel Corporation t/a the Parker House v.  
Jersey Central Power & Light Company and First Energy Corporation  
BPU Docket No. EC05090786  
Law Division Docket No. L-2904-04

**SERVICE LIST**

1. Avon Hotel Corporation

Charles F. Shaw, Esq.  
Pandolfe, Shaw & Rubino, L.L.C.  
215 Morris Avenue  
Spring Lake, NJ 07762

Rachel Boylan, Esq.  
Legal Specialist  
Counsel's Office  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

2. JCP&L

Dawn P. Marino, Esq.  
Hoagland, Longo, Moran,  
Dunst & Doukas, LLP  
40 Paterson Street  
P.O. Box 480  
New Brunswick, NJ 08903

6. Deputy Attorney General

Susan Vercheak, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P. O. Box 45029  
Newark, New Jersey 07101

3. Board Staff

Nusha Wyner, Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Elise Goldblat, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P. O. Box 45029  
Newark, New Jersey 07101

David Ballengee  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Alex Moreau, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P. O. Box 45029  
Newark, New Jersey 07101