Agenda Date: 8/19/09
Agenda Item: 7A

STATE OF NEW JERSEY

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

CUSTOMER ASSISTANCE

ROBERT AND KATHLEEN SALTER, Petitioner, v. JERSEY CENTRAL POWER & LIGHT COMPANY, Respondent.	))))))	ORDER ADOPTING INITIAL DECISION BPU DOCKET NO. EC07060384U OAL DOCKET NO. PUC 07666-07

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition filed on June 18, 2007, Robert and Kathleen Salter ("Petitioners") filed a complaint with the Board of Public Utilities ("Board"). Petitioners alleged that on May 24, 2006, Jersey Central Power & Light ("Respondent") shut-off electric utility service without proper notice or authority. Petitioners sought compensatory damages and punitive damages for the negligent and/or intentional termination of electric service at their residence. Petitioners also alleged the termination of electric utility services at their business in 2002 was unauthorized and resulted in the business suffering loses and damages. Respondent, in its Answer filed July 17, 2007 denied the allegations that Petitioners service was improperly terminated. Respondent claims that Petitioners were informed that the electrical service would be disconnected because the use of an extension cord to provide electric service to a business address from a residence created an unsafe condition. Thus, Respondent requested denial of the relief sought by Petitioners and payment of the outstanding balance.

On July 20, 2007, after receiving Respondent's answer, this matter was transmitted to the Office of Administrative Law ("OAL") for a hearing as a contested case. Administrative Law Judge ("ALJ") Margaret M. Monaco oversaw settlement conferences in an attempt to resolve or narrow the contested issues. On March 3, 2008 this matter was reassigned to ALJ Gail M. Cookson to continue settlement conferences and to prepare for a plenary hearing. Petitioners and Respondent executed two partial stipulations, dated May 18, 2008 and October 10, 2008, wherein the parties were able to narrow the issues in dispute. These stipulations were adopted and made a part of the record in this matter. Hearings on the remaining issues were held on January 30, February 11, and April 28, 2009.

On June 8, 2009, ALJ Cookson issued and submitted an Initial Decision to the Board. ALJ Cookson's factual discussion, reasoning, findings, and conclusions of law are set forth with sufficient detail in the Initial Decision and need not be restated here. A copy of the Initial Decision is attached to and incorporated in this Order.

Pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, the Board requested and was granted an extension of time to review the Initial Decision and written exceptions before issuing its decision. Petitioners submitted written exceptions dated June 22, 2009. Respondent replied to Petitioners' exceptions with a letter brief dated June 29, 2009. The exceptions and reply are discussed further below. At this time, the Board has completed review and now adopts the Initial Decision without modification.

EXCEPTIONS TO THE INITIAL DECISION

In their exceptions, Petitioners argue that this case "should have been decided entirely" on whether Petitioners' diversion of power from the electrical box at the Mount Mills Road residence to the electrical box at Twin Sweet Farms created an unsafe condition. Petitioners' Exceptions, at 1. Petitioners argue that "the number of regulations broken" by Petitioners in constructing the hook-up should not "compel the court to conclude" that Petitioners created an unsafe condition at the Englishtown Road residence. Id. at 5. Petitioners claim that "[a] reasonable analysis and evaluation of the facts should compel the opposite conclusion." Ibid. According to Petitioners, "[t]he obvious hook-up was at the other residence." Ibid.

Petitioners claim that ALJ Cookson inappropriately applied the clean hands doctrine by applying it only to Petitioners' conduct and not to Respondents' conduct. Id. at 1. Petitioners argue that under the clean hands doctrine, as defined by Blacks Law Dictionary, "a party cannot seek equitable relief by asserting an equitable defense if that party has violated an equitable principle such as good faith." Id. at 2. Petitioners argue that Ms. Gibbs, Respondent's investigator, failed to "make a good faith effort to investigate the matter." Id. at 4. Petitioners note that Ms. Gibbs acknowledged her own failure to remove the meters at the Mount Mills Road and Englishtown Road residences in an attempt to learn which residence was supplying electricity to the farm stand. Id. at 3. Also, Ms. Gibbs acknowledged her failure to access the billing records in an attempt to learn which residence was connected to the farm. Ibid. Petitioners claim that Ms. Gibbs acknowledged that she did not ask Mr. Downey, the township code inspector who was on-site with her, for his opinion regarding which residence was supplying power to the farm stand. Petitioners note that, on cross-examination, Mr. Downey testified that he saw the electrical cord running between the farm store and Mount Mills Road. Id. at 4. For these reasons, Petitioners contend that ALJ Cookson erred.

Petitioners also claim that ALJ Cookson failed to consider Mrs. Salter's medical condition. Id. at 5. Petitioners reference Ms. Gibbs' acknowledgment of discussions with Mrs. Salter about her medical condition prior to the June 16, 2006 letter from Petitioners. Petitioners contend that Ms. Gibbs knew of Mrs. Salter's medical condition prior to the letter. Ibid. Therefore, Petitioners conclude that Ms. Gibbs should not have ordered the power supply shut-off at both residences. Ibid.

Respondent replied to Petitioners' exceptions by letter dated June 29, 2009. Respondent begins its Reply by stating that "[t]he central question at this stage of the proceeding is whether the findings of the Initial Decision are supported by 'sufficient credible evidence present in the record." Respondent's Reply to Exceptions, at 4 (citing *In re* Petition of Hackensack Water Co., 249 N.J. Super. 164, 174 (App. Div. 1991). Specifically, Respondent states that, if Petitioner cannot show that ALJ Cookson based her Initial Decision on a '"palpably incorrect or irrational basis' or 'did not consider, or failed to appreciate the significance of probative evidence,' the Initial Decision should be left intact without modification and adopted as the Board's Final Decision." Ibid. (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App Div. 1996)).

Respondent claims that "Petitioners' exceptions raise only one issue – whether ALJ Cookson erred in applying the clean hands doctrine to the facts of this case." Ibid. Respondent asserts that ALJ Cookson did not err in applying the clean hands doctrine. Ibid. "[T]he doctrine was used to merely buttress an otherwise well-documented, well-supported and well-reasoned conclusion by the fact-finder who heard the evidence and observed the witnesses." Ibid. Although Respondent contends that the clean hands doctrine was appropriately applied in this case, Id. at 7-11, Respondent asserts that ALJ Cookson's Initial Decision can "logically and fairly" stand as "adequate and sufficient" without the added support of the equitable doctrine, Id. at 6. Respondent also disputes Petitioners' fact specific arguments regarding the application of the clean hands doctrine. Id. at 11-18. Respondent claims that these arguments are either wrong or fail to show that the basis for the Initial Decision was palpably incorrect or otherwise irrational. Id. at 11. Thus, Respondent concludes by requesting that the Board adopts the Initial Decision without modification.

DISCUSSIONS AND FINDINGS

The Initial Decision, as noted above, states ALJ Cookson's factual discussion, reasoning, findings, and conclusions of law with sufficient detail. The Initial Decision is attached to and incorporated in this Order.

In their exceptions, Petitioners argue that violating N.J.A.C. 14:3-3A.1(a)(5)(ix) by creating an unsafe condition at the Mount Mills Road residence should not have lead to a conclusion that an unsafe condition existed at the Englishtown Road residence. Petitioners' Exceptions, supra, at 5. While that may be accurate, Petitioners violations are not limited to the creation of an unsafe condition. Initial Decision, at 16-18 (finding Petitioners' violation of N.J.A.C. 14:3-3A.1(a)(5)(i), (v), (vi), (ix) and (x) among others). A utility may suspend service when a customer denies the utility reasonable access to inspect utility equipment. N.J.A.C. 14:3-3A.1(a)(5)(i). In the case at hand, Petitioners refused to allow Ms. Gibbs and Mr. Downey access to their properties on Mount Mills Road and Englishtown Road. Initial Decision, supra, at 17-20. Because Petitioners denied Ms. Gibbs and Mr. Downey access to the properties, Respondent could not verify the safety of the electrical hook-up. Ibid. Notwithstanding Petitioners' claim that "[t]he obvious hook-up was at the other residence," Petitioners' Exceptions, supra, at 5, the denial of access to the Englishtown Road residence was sufficient grounds for the shut-off. Initial Decision, supra, at 17-20. Therefore, ALJ Cookson correctly concluded that Respondent had the right to discontinue service under the regulation. Id. at 17.

Petitioners also claim that ALJ Cookson inappropriately applied the clean hands doctrine by applying it only to Petitioners' conduct and not to Respondents' conduct. Petitioners' Exceptions, supra, at 1. The Board disagrees with Petitioners' claim that ALJ Cookson failed to consider Respondent's conduct. ALJ Cookson specifically identified Respondent's violation of the Board's regulations in her thorough legal analysis. Initial Decision, supra, at 18 n.9, 19 n.10.

ALJ Cookson noted two violations. First, a public utility can only discontinue residential service between the hours of 8:00 A.M. and 4:00 P.M. Monday through Thursday, "unless there was a safety related emergency." N.J.A.C. 14:3-3-3A.1(c). Here, Respondent discontinued electrical service at 5:20 P.M. on the Wednesday before Memorial Day Weekend. Initial Decision, supra, at 18 n.9. ALJ Cookson acknowledged that the timing was "unfortunate" since "the utility could have scheduled that work order otherwise in light of the inadvertent two-month delay." Ibid. However, ALJ Cookson concluded that this violation was "either a de minimus violation . . . or justified by the safety-related issues." Ibid. The Board agrees with this analysis. In addition, N.J.A.C. 14:3-3A.9 states that "[s]ervice shall be restored within 12 hours upon proper application when . . . [a]ll of the conditions under which such service was discontinued are corrected." ALJ Cookson found that the restoration of service in this matter was made on Monday and not Friday after the receipt of Petitioners' cut-in card. Id. at 19 n.10. ALJ Cookson determined that this violation was "de minimus under all the circumstances," which included the fact that Petitioners "did not meet with and apply for the requisite municipal re-connect permit and inspection until June 21, 2006," nearly a month after service was discontinued. Id. at 14, 19. The Board also finds the harm to have been de minimus in this instance, but reminds the utility of its obligation to comply with the Board's regulations. Nevertheless, after balancing Respondent's regulatory violations against Petitioners' violations, the Board agrees with ALJ Cookson's legal analysis and finds that Petitioners' regulatory violations outweigh Respondent's violations.

Even if accurate, Petitioners' assertion that ALJ Cookson incorrectly applied of the clean hands doctrine does not support the Board's rejection or modification of this Initial Decision. The Board agrees with Respondent that ALJ Cookson used the equitable doctrine to buttress an already sound legal analysis. Petitioners concede that they violated multiple regulations. These violations carry with them important public policy implications regarding both safety and the ability of utilities to provide cost effective service. The Board's regulations state that a diversion of service is "presumed to constitute a hazardous condition until the utility investigates." N.J.A.C. 14:3-7.8. Therefore, to hold as Petitioners request would cause the Board to sanction conduct that puts Petitioners, their families, and the general public at risk. The Board can do no such thing.

Finally, with regard to Petitioners' claims about Mrs. Salter's medical condition, ALJ Cookson considered the competent and credible evidence, Initial Decision, supra, at 14, and concluded that Respondent was unaware of the "non-life-threatening condition before June 16 and then, only by way of unverified letter of counsel." Id. at 20-21. The Board can only reverse fact findings based on the credibility of lay witnesses if the findings are "arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). Petitioners' exceptions do not support such a finding by the Board.

Upon careful review and consideration of the record, the Board HEREBY FINDS that the factual determinations and legal conclusions of ALJ Cookson are reasonable and based upon sufficient, competent, and credible evidence. The Board HEREBY ADOPTS the Initial Decision in its entirety. Thus, the Board HEREBY ORDERS Petitioners' complaint to be DISMISSED WITH PREJUDICE.

DATED: 8/19/09

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

ROBERT SALTER AND KATHLEEN SALTER

v.

JERSEY CENTRAL POWER AND LIGHT

BPU DOCKET NO. EC07060384U
OAL DOCKET NO. PUC 07666-07

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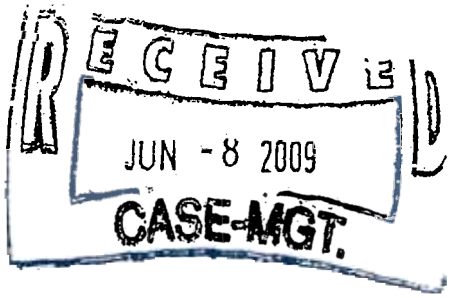

INITIAL DECISION
OAL DKT. NO. PUC 07666-07
AGENCY DKT. NO. EC07060384U

ROBERT AND KATHLEEN SALTER,
Petitioners,
v.
JERSEY CENTRAL POWER & LIGHT COMPANY,
Respondent.

Theodore Campbell, Esq., for petitioners Robert and Kathleen Salter

Michael J. Connelly, Esq., for respondent Jersey Central Power & Light Company (Morgan Lewis, attorneys)

Record Closed: April 28, 2009 Decided: June 8, 2009

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

Robert and Kathleen Salter filed a complaint with the Board of Public Utilities on June 18, 2007, alleging that their electric utility service had been shut off by their public utility company, Jersey Central Power & Light (JCP&L) without proper notice or authority on May 24, 2006, causing them to incur compensatory damages and to be entitled to punitive damages for the negligent and/or intentional termination of electric service at their

residence. The Complaint also alleged that a 2002 termination of electric utility services at petitioners' business Twin Sweet Farms was unauthorized, the result of disputed charges and uncorrected power surges, and that the business suffered losses and damages as a result. JCP&L filed a Verified Answer to the Complaint on July 17, 2007.[1]

On July 26, 2007, this matter was transmitted to the Office of Administrative Law (OAL) by the Board of Public Utilities for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to- 13. It was assigned to the Honorable Margaret M. Monaco, A.L.J. Judge Monaco held several settlement conferences with the parties in an attempt to resolve or narrow the issues to be tried. This matter was re-assigned to the undersigned on March 3, 2008. The previously scheduled plenary hearing dates were re-scheduled to allow both the parties and the undersigned to continue those settlement discussions and to prepare for the hearing.

By Stipulation of Partial Settlement executed on May 16, 2008, petitioners agreed to withdraw and dismiss from this administrative action their claims for punitive and compensatory damages without prejudice to their action filed in the Law Division of the Superior Court, captioned Salter v. JCP&L, Dkt. No. MID-L-4758-07. By Second Stipulation of Partial Settlement executed by the parties on October 10, 2008, the parties were able to further narrow the issues in contention by addressing and resolving the amount of the alleged delinquent Twin Sweet Farm account balance and the future tariff rates and conditions under which new service would be provided to that commercial account. Thus, the issue to be decided now is strictly the question as to whether the public utility had the right and authority to discontinue electric service to the Salter homestead[2] and whether they complied with all applicable regulations in doing so.

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[1] While asserting in its prayer for relief that petitioners should be found to owe JCP&L $8,661.02 for the commercial electric service to Twin Sweet Farms, I note that this pleading did not assert a Counterclaim. In any event, that request for relief is moot under the Second Stipulation of Settlement.

[2] I also ruled at the hearing that the basis and manner of the discontinuance of electric service to the house located at 381 Mount Mills Road was not at issue because the Complaint did not plead it and the occupants of that house were not parties. Nevertheless, as the facts and circumstances surrounding the shut-off of electrical service to 589 Englishtown Road are the same as that to 381 Mount Mills Road, I would make the same findings and conclusions applicable to both properties. 381 Mount Mills Road was owned by Robert Salter, with the electric service still in the name of his deceased mother, Jennie Salter. His sister and her family occupied the property and paid the utility bills and assisted at the farm stand in lieu of rent or mortgage to her brother. If anything, the case presented by petitioners supports a finding

In consultation with counsel and the judge of the Superior Court action, it was agreed that this administrative matter should proceed and be completed prior to the trial of the Law Division damages case in order that there could be proper deferral on the issue of the discontinuance of service to the petitioners under the applicable tariffs and BPU regulations on which the BPU has particular expertise. See Boss v. Rockland Elec. Co., 95 N.J. 33 (1983).

Hearings were held on January 30, February 11, and April 28, 2009, at which time the record closed.

FACTUAL DISCUSSION

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

Petitioners are Robert Forman Salter and Kathleen Salter, members of a family who have lived and farmed in the Englishtown area for several generations. The property owned by the Salter family includes several structures. Petitioners' home is the residential building located on Lot 5 [Block 39] in Monroe Township with a mailing address of 589 Englishtown Road. Salter also owns Lots 4 and 6. Lot 6 is vacant land. On Lot 4 is located another residential building as well as a farm store known as Twin Sweet Farms, with detached greenhouses. Twin Sweet Farms is an "S" corporation of which Robert Salter is the sole shareholder. The home has a postal address of 381 Mount Mills Road but the Post Office utilizes 589 Englishtown Road for deliveries to Twin Sweet Farms. Robert Salter allows his sister and her family to live in 381 Mount

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that discontinuance of service to 381 Mount Mills Road was more appropriate than 589 Englishtown because 381 Mount Mills Road was the actual source of electric service—via the extension cord—to Twin Sweet Farms. Petitioners argue that the lack of extension cord and proximity of their home to the farm stand acted as constructive notice to JCP&L that 589 Englishtown was not the source of any potentially unauthorized or unsafe electric service.

Mills[3] which was the former home of their mother who passed away several years ago. Salter confirmed that his mother's name, Jenny Salter, remained on the electric utility accounts for both 381 Mount Mills and Twin Sweet Farms even after her death. His sister, Elmira "Mimie" Cook, owns a separate residential property across the street at 390 Mount Mills Road but it is a much smaller home. It is undisputed that electric service to that property was unaffected by the events at issue herein.

This is not the first dispute between these parties although it is the first formal complaint filed with the BPU by the petitioners. Originally, Twin Sweet Farms was on a three-phase commercial or "general service" tariff. A disagreement arose over the invoices and the quality of service to the farm stand which led to a large and disputed outstanding balance. In January 2002, JCP&L discontinued electric service to the farm stand and greenhouses due to the unpaid balance. The correctness of that business shut-off or the amount and accuracy of the account under dispute is not at issue here [see Second Stipulation] but it serves as critical background to this controversy. Salter explained that when he lost service to Twin Sweet Farms, he had to find an alternative means of powering the store's fixtures. He admitted that he did not spend much time considering the purchase of a generator because he knew they could not afford one of sufficient size. Instead, Salter ran "6-4" wire from the residential electrical box at 381 Mount Mills to the store's electrical box which fed the eighteen to twenty breakers used in the store and the greenhouses.

Petitioner was confident that he knew what he was doing when he ran the wire because he had some prior construction experience. Nevertheless, he acknowledged that he was not a licensed electrician nor did he seek a municipal permit before or after making the connection. In addition, he stated that the properties never had a fuse blow or a breaker trip during the more than four years that this wire fed Twin Sweet Farms with power. The wire ran approximately 115 feet from 381 Mount Mills past the greenhouses to the farm stand and was never hidden or disguised from view. Salter believed that he was doing nothing wrong by running the wire from 381 Mount Mills after the electricity account to Twin Sweet Farms was shut off. It was his opinion that the

[3] For ease of reference, all parties referred to the three principal buildings at issue in this dispute as "589 Englishtown," "381 Mount Mills," and the "farm stand." This decision will continue with that convention.

utility company only controlled the wires from the utility pole to the meter and not from the meter to electric boxes and from there to electric fixtures. He also felt that he did not need an electrical contractor to make the connection because the store being without power was a kind of temporary emergency.

By all accounts, it was March 29, 2006, before JCP&L investigated the electric hook-ups at the Salter properties. As explained by Amy Gibbs, an investigator for the company's southern region, the investigation commenced as a result of a report several days earlier to the JCP&L Revenue Protection Department that the Twin Sweet Farms, a known inactive account, had power to lights and other fixtures. The events that unfolded that day were subject to the various perspectives of the persons present.

Salter stated that he saw a car pull up near the corner of Mount Mills and Englishtown roads around 9:30 or 10:00 in the morning. At first, he thought it might be someone needing directions. When Amy Gibbs introduced herself as from JCP&L, Salter claims that she immediately raised her voice and accused him of stealing power and being a terrorist. He does not recall the specific conversation or what words he used but he admitted that he was angry and that his blood pressure was rising. As they spoke, he backed away until there was at least thirty feet between them. For the rest of the several hours that persons from JCP&L or others were on the property, he kept his distance. Additionally, he testified that later, when the meter was pulled at the service to 381 Mount Mills, Salter observed the lights and fans at the farm stand and the greenhouses go off.

Gibbs stated that she did not raise her voice or shout threats to Salter but identified herself as a JCP&L investigator. He immediately became defensive and argumentative, sometimes flailing his arms and using some curse words. She recalls him shouting that he was not a thief, that they had no right to be there, and that the company was stupid because he had been doing this for four years and they never knew. Gibbs stated that if she raised her voice at all it was because Salter was walking away from her while she was telling him that they needed to discuss the matter. At one point, Salter's sister and another individual came over to him from inside the farm store

and tried to calm him down but neither of those persons spoke to her. Stephen Seidel,[4] a JCP&L technician assigned to accompany Gibbs that day, drove up separately that morning and waited by his utility truck during these initial communications between Salter and Gibbs which lasted no more than three to five minutes.

Due to the lack of cooperation and trust, Gibbs said that she decided to call the police in order to enlist their assistance in the situation. She then waited their arrival over by the company van. Notwithstanding that I **FIND** that voices were no doubt raised by both Gibbs and Salter at this initial interaction, by the time the police and code official arrived, I also **FIND** that calmer minds prevailed and the investigative steps that took place next are more relevant to the merits herein than the first conversation. Gibbs explained to Officer Morano of Monroe Township that she needed her assistance so that JCP&L could investigate the source of electricity to Twin Sweet Farms. She testified that Salter, who was on the store's porch at that time, again became agitated and upset repeating that he was not a thief and that there was no reason for them to be there. The police officer then conversed with Salter who explained that the farm stand was supplied with power from an extension cord from the house, apparently physically indicating toward 381 Mount Mills. When the officer conveyed this information to Gibbs and Gibbs commented that an extension cord is within municipal code jurisdiction, Officer Morano contacted the township code official's office. The officer then indicated to Gibbs that she should commence her investigation.

The JCP&L technician accompanied Gibbs on her inspection. First he pulled off the meter attached to the farm stand structure and confirmed that the company seal from the 2002 disconnect was still in place. Next, they reviewed the elements of the meter base to assure themselves that Salter had not bypassed the meter to obtain unrecorded electric service. The technician replaced the meter base and cover, making sure the plastic sleeves which block the service from the pole were back in place. Gibbs and the technician then walked to 589 Englishtown to review that meter and to see if there was an extension cord over there. That residential meter was properly sealed per regular company practice for operational meters and they could not visually

[4] His testimony confirmed that of hers on what transpired that morning, the fact that Salter raised his voice but Gibbs did not, and the actions they took once the investigation actually began.

confirm an extension cord but Gibbs explained that they were walking back along Englishtown Road toward Mount Mills Road and the farm stand so as not to disturb the planted fields.

Upon their return to the store, the municipal code official arrived. At that point, Gibbs testified that the police officer, code official, her technician and herself walked along Mount Mills Road in the direction of the greenhouses that were near the farm stand between it and 381 Mount Mills. She also stated that according to the municipal inspector, Salter was steadfastly maintaining that they could not inspect the interior of either of the homes or Twin Sweet Farms. Gibbs testified that from this perspective, they still could not observe any wire serving as a source of power. Getting off the road, they headed toward the greenhouses where several cut electric cables were protruding from the ground. Gibbs was not sure if these exposed wires were the power source to the stand. Before they could proceed further, Salter approached the group with cell phone in hand indicating that he was speaking with his attorney and that they needed to get off his property. Gibbs responded that the exposed wires and the still-unlocated extension cord constituted an unsafe condition and that the service was going to have to be disconnected. Gibbs described Salter as mad and agitated, repeating that he had been doing this for four years and nothing needed to be shut off. On advice of the police, Gibbs and the technician returned to their vehicles and left the area. She testified that JCP&L was never able to inspect the meter at 381 Mount Mills and they never located the extension cord.

Robert Downey, who at that time was the town's electrical subcode official, obtained Salter's permission to see the wire feeding power to the farm stand. Downey observed the extension cord lying on the ground, mostly overgrown with grass. The inspector determined that the extension cord did not meet national electric code standards and could cause a serious electric shock if run over, for example, by a lawnmower. Downey and the police officer then walked around the back of the house but Salter denied them entry into the basement to view the electric box. He saw a black rubber cord which looked like it was coming out of a basement window from 381 Mount Mills and running to the store. It did not appear to be emanating from the outside meter

at the house. While this raised a code offense for which Salter could be cited and fined, Downey decided to give Salter time to remove the violation and come back to what he referred to as a "state of normalcy."

Downey further explained that even if the wire had been fused, he would still consider it to be unsafe and inappropriate. In this case, he had insufficient information to determine its safety because he was denied the ability to see all the connections and the ends of the wire. On March 29, he engaged in no discussions with Salter as to the length of time the wire had been there, nor did he discuss with Gibbs which structure was likely providing a source of power to the store. In his professional opinion, the cord was contrary to code and needed to be removed. He conveyed that opinion to Salter.

When Gibbs left the Salter property that day, she placed an order to have service to all three buildings cut immediately because of the unsafe condition. In addition to the opinion of the inspector, she found it significant that she had not been able to confirm the actual power source or to inspect the safety of any of the connections. Gibbs admitted that Downey advised her that Salter reported the source as 381 Mount Mills. While petitioners pressed her on cross-examination that she could have deduced that only 381 Mount Mills was implicated in the farm store connection from the more recent high utility billings to 381 Mount Mills, the distance of the farm stand from 589 Englishtown and the that fact of her own observations at 589 Englishtown, Gibbs explained that the unsafe and unknown nature of the connection required her to order the immediate shut-off service to all three buildings. Nevertheless, she also had decided that same day that she would not file a municipal complaint for theft of services against the Salters.

After March 29, however, the power remained connected. Apparently, Gibbs placed the disconnect order that caused work orders to be initiated by JCP&L on March 30 and April 4, but either they were not fulfilled or mishandled in the field, or somehow the service was reconnected because an "implausible usage" report to Gibbs was made on May 5 indicating that there was still power usage at these properties. Salter admitted that he expected the power to be shut off any day at 381 Mount Mills, on a

day-to-day basis. In it undisputed that no follow-up written notice or correspondence was sent by JCP&L to Salter after March 29, 2006, and I so **FIND**. I also **FIND** as undisputed that between March 29 and May 24, Salter did not meet with the municipal code official or with any representative of JCP&L. Neither did the family meet with their legal counsel during this interim period. The Salters also did not prepare any contingency plans for being without electric power at any of the buildings.[5] They just waited. That wait turned out to be two months, as discussed below.

Elmira "Mimie" Cook, Robert Salter's sister, testified with regard to the practice of the family with respect to paying the JCP&L bill invoiced to 381 Mount Mills and some background with respect to the farm store operations. The house at 381 Mount Mills belonged to their mother and Cook spent a lot of her time over there with her mother and also because her own home across the street was cramped. The house at 390 Mount Mills had only one bedroom and had belonged to her uncle until 1990. Her uncle had moved in to the house across the street with Cook's mother, his sister, prior to his death. Sometime during the 2002-2003 period, Cook began sleeping at her mother's house more regularly.

While her mother was alive, the elder Mrs. Salter paid the utility bills. The Cooks took over those payments after her death but the bills remained in the name of Jennie Salter. Apparently, her estate is still not settled and the family never thought to change the name on the utility account. Cook handles the bills and opens mail to this day addressed to her mother. Cook also handles the bills at Twin Sweet Farms as its bookkeeper, and is the primary operator of the store. She stated that the household electric bill would range from $100 to $150 per month prior to the connection being run to the farm stand. Afterwards, the bill to 381 Mount Mill increased to $500 and then to $1,500.

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[5] Salter's wife, Kathleen Salter, was not present on March 29 as she is employed by a Middlesex County educational agency that required more-than-full-time commitment during the spring. She testified at the hearing that her husband had not told her that JCP&L and Monroe Township insisted that the extension cord be removed. Neither placed any calls to JCP&L to discuss how to resolve the connection issue, apparently feeling that past communications with the company had been futile.

Cook was well aware of the extension wire running between 381 Mount Mill and the farm stand and greenhouses subsequent to the discontinuance of service to Twin Sweet Farms in 2002. She recalled that there was a family discussion about it and she knew that her brother was going to set it up because they had no power at the store. Cook believed that it was a fair and reasonable solution because Robert could not resolve the commercial bill dispute with JCP&L, the store needed power and the family was paying for the electricity that they used at both locations through the bill to 381 Mount Mills. When the bill to that house became too much for her to keep current, she started to receive notices and collection calls. As far as JCP&L was concerned, she was "Jennie's daughter" and had been an authorized agent on the account. No one ever notified JCP&L that Jennie had died. Cook made arrangements with JCP&L to pay off the delinquent balance through installments. Sometimes Robert Salter paid his sister extra money out of the business account to cover its electric usage. At no time during these discussions with the utility company about an installment plan did either party talk about the reason for the abnormally high electric usage at 381 Mount Mills. To her and the family, running this wire from 381 Mount Mills to the farm stand was the only solution because they had been unable to afford a generator for the store. According to her testimony, which was consistent with that of Robert Salter, they did not make very many inquiries into generators until after May 24, 2006, and had not engaged in any actual shopping.

Cook was the store on March 29, 2006, when Gibbs stopped her car at the property. She recalled being on the porch having coffee and planning out the day as was her custom. Gibbs and Salter were several feet apart. Cook heard Gibbs accuse Salter of being a thief stealing power all these years and stating that he was a terrorist and should be arrested. The tone of the conversation quickly escalated and Cook was concerned about her brother's blood pressure. He was getting louder and waving his arms. He certainly replied that he was not a thief and had been paying for the power all along. He might have used some name-calling. She implored him to "back off" but he was not listening to her. At that point, Cook went into the farm stand in order to call the family's attorney because she was convinced that her brother was going to be arrested. Some time thereafter, she actually left to meet with the attorney so she was not at the

property when the municipal police officer or inspector arrived. Nor was Cook there when those persons and Gibbs walked around the property and over toward 381 Mount Mills. Thus, her personal observations of the events that unfolded that day are limited.

Afterwards, Cook was a party to another family discussion as to what they should do. Having been told that JCP&L intended to disconnect the power, they knew there was some urgency to acquiring a generator. Cook admitted that she always knew it was possible that JCP&L would come to the property and learn of the house-to-farm connection but she never received any notice of a specific date when that would happen. In spite of the fact that her residence at 381 Mount Mills was intimately involved and that she paid the bill, after this incident she deferred to her sister-in-law to handle the dispute with JCP&L because it had more to do with her brother and the store.

As stated above, it came to the attention of Gibbs on or about May 5 that the Salter properties had not actually been disconnected right after the March 29 confrontation. She also drove by the area and personally observed that the pole fuse to the farm stand had been disconnected but not to the residential properties. In addition, she conformed through review of company records that Salter had not corrected the issue through the requisite municipal permit and inspection process. When she learned this, she issued another work order to have the service disconnected. On May 24, 2006, which was the Wednesday before the Memorial Day weekend, Salter saw a JCP&L technician drive up at approximately 5:20 p.m. and cut the electric services at the pole to 589 Englishtown, 381 Mount Mills and the street light. When he asked why the technician was cutting the wires, the worker merely stated that he had a work order. At first, Salter did not make the connection to the March 29 investigation and asked his wife if they had paid the bills on time. Kathleen Salter then took over the task of communicating with the company which was their customary division of roles.

Mrs. Salter called that evening and left a message for Gibbs who was not in the JCP&L office. Gibbs returned the call the next day. Both testified that Gibbs did not want to discuss the distinction between 589 Englishtown and 381 Mount Mills. While

Kathleen Salter kept insisting that "our house has nothing to do with this," Gibbs kept repeating that they had never determined which house was the source. Gibbs also wanted Mr. Salter as the account holder to have to authorize or initiate the communication with the utility company. There seems to have been no discussion by either of them of the steps that could be taken to restore power through municipal inspection. It is also undisputed that Mrs. Salter expressed her concern about her elderly mother coming to visit over the holiday weekend without power to the house.

Communications continued thereafter only between petitioner's attorney and JCP&L. Gibbs identified a letter sent from counsel and dated June 16, 2006, in which he referred to the fact that electric service was required in order to operate special equipment for a medical condition of his clients. She testified that this was her first notice that there were any medical concerns at the household. It was her recollection that no such concerns were mentioned by Mrs. Salter in the previous telephone communication with the exception of the visit of an elderly parent.

Additional evidence and testimony was adduced at the hearing on the issue of whether billing records were reviewed in the course of the investigation or disconnect action. Cook recalled that there was a meeting with two female representatives of the utility company to go over a packet of information relating to rates and some distinctions between residential and three-phase commercial service. Cook identified the packet of information as that which has been marked as P-5 but had difficulty placing the date of the meeting more specifically than sometime between June and August. Gibbs stated that she did not recall ordering billing information and that in ordinary course, the investigation side of the company would not have actual or constructive notice of billing information. In other words, her investigation did not know that 381 Mount Mills' usage had escalated during the same period Salter ran the extension wire while 589 Englishtown's usage remained consistent. I **FIND** that the JCP&L investigation led by Gibbs did not refer to or rely upon the usage history at the two residential locations in order to deduce which house was supplying the farm stand with power. Whether it should have, as petitioners argue, is a legal question.

Petitioners confirmed that within a few days of the disconnection, Salter had purchased a small generator from Lowe's in order to power the well pump and one light for 589 Englishtown. Mrs. Salter did not sleep at their home during this period because she had a special pump for a lymphatic leg condition. She also suffers from sleep apnea and both conditions are exacerbated by the summer heat. She testified that she slept mostly at each of her son's homes for the weeks during which 589 Englishtown was without power but she left her medical equipment home because it was difficult to transport. Kathleen Salter described her condition as non-life-threatening.

On June 21, 2006, Salter went to the municipal offices in order to complete the municipal permit applications for electrical service reconnections to both residential properties. The permits were issued and the fees paid. On June 22, Downey went out to the properties, met Salter at the farm store and was escorted by Salter into the basements of 381 Mount Mills and 589 Englishtown. That was the first meeting Downey had with Salter since the incident on March 29. Downey was there to inspect that the residential electrical box was connected in accordance with code, that it had proper size wire and overcurrent protections, that the outside pipe was properly strapped, and that the box had no uncovered "knock-out's" in the box. That same afternoon, Downey returned from the physical inspection and ensured that the "cut-in cards" were faxed to JCP&L. As explained, the next step in the reconnection process was for the utility company to issue a work order and send a crew out to physically restore power at the pole. It was stipulated by the parties at the hearing that the electric service returned to 589 Englishtown on June 26, 2006.[6]

Based upon the facts confirmed by the testimony of both parties, I **FIND** that petitioners exercised self-help for several years to run electricity from 381 Mount Mills to Twin Sweet Farms without utility authorization or municipal permit. Further, based upon the testimony of the municipal code official, which was not contradicted by any professional or expert testimony by the petitioners, I **FIND** that the make-shift connection did not comply with the national electrical code and was presumptively unsafe and hazardous notwithstanding the Salters' testimony that no fires, shocks,

[6] It was also stipulated that the service to 381 Mount Mills returned on July 20, 2006.

injuries or outages occurred during the four years the extension cord was in place

I **FIND** that JCP&L intended to disconnect electric service to all three of the Salter properties and accounts, one of which was the already-inactivated Twin Sweet Farms account, on March 29, 2006. Due to an apparent field glitch, the power was not actually disconnected until May 24, 2006. Accordingly, I **FIND** that petitioners had actual in-person notice on March 29 that the power was going to be shut off immediately. As Robert Salter stated himself, he "gained two months" that he did not expect.

I **FIND** that petitioners did nothing to prepare themselves or their family members for the inevitable shut-off of electricity in spite of more than sufficient time to do so both before and after March 29. Essentially, they took a watch-and-see attitude. As there was no municipal complaint issued by the township and no complaint filed by JCP&L, they seem to have thought that they were in the clear. I **FIND** that the petitioners failed to engage in any diligent inquiries into non-utility, alternative sources of power to the three structures until after May 24. Further, I **FIND** that petitioners failed to engage in any inquiry of the municipality as to the steps needed to re-establish electric service until weeks after the disconnection occurred.

I **FIND** that JCP&L had procedures in place by which customers could advise the utility of a medical need for uninterrupted electric service for life-sustaining medical equipment.[7] I also **FIND** on the basis of the weight of the admissible evidence, especially the document trail of letters from counsel following the shut-off, that Kathleen Salter did not advise JCP&L of such an emergent medical need for electricity in the 589 Englishtown household until after the shut-off when their attorney sent the letter dated June 16, 2006. The fact that electricity was not restored to 589 Englishtown until June 26, 2006, was primarily due to the fact that Robert Salter did not meet with and apply for the requisite municipal re-connect permit and inspection until June 21, 2006. The cut-in

[7] "Electric and gas utilities shall, on a semi-annual basis, solicit information from their residential customers in order to determine the presence of any life-sustaining equipment on the customer's premises." N.J.A.C. 14:3-3A.4(d). According to the testimony of Amy Gibbs, which was confirmed by the petitioner Kathleen Salter in her own testimony, JCP&L had such periodic solicitations but Kathleen Salter never completed any such notice to the utility.

card was faxed on a Thursday afternoon with service restored by JCP&L on the Monday thereafter; that is to say, with one business day in between

ANALYSIS AND CONCLUSIONS OF LAW

Petitioners allege that their public utility electric service provider, JCP&L, breached the regulations of the BPU when it disconnected the service to 589 Englishtown at the pole on May 24, 2006. It is not disputed that the reason for this disconnection was the presence of the extension cord between 381 Mount Mills and Twin Sweet Farms. I reiterate that the issue of the propriety of the disconnection at 381 Mount Mills is not part of this contested matter. It also is not disputed that the basis of the disconnection was not for nonpayment of the bills issued to 589 Englishtown or 381 Mount Mills. While the history of this dispute stems from the 2002 business service bill dispute of Twin Sweet Farms, that issue is now attenuated from the controversy at hand. Thus, I turn to the applicable BPU regulations on discontinuance of service to the 589 Englishtown residence.

N.J.A.C. 14:3-3A.1 provides that the utility "shall have the right to suspend or curtail or discontinue service for any of the following reasons:" . . .

> 1. For the purpose of making permanent or temporary repairs, changes or improvements in any part of its system;
>
> 2. For compliance in good faith with any governmental order or directive, regardless of whether such order or directive subsequently may be held to be invalid;
>
> 3. For nonpayment of a valid bill due for service furnished at a present or previous location, in accordance with N.J.A.C. 14:3-3A.2;
>
> 4. For nonpayment of a deposit, in accordance with N.J.A.C. 14:3-3A.9; or
>
> 5. For any of the following acts or omissions on the part of the customer:

> i. Refusal of reasonable access to the customer's premises in accordance with N.J.A.C. 14:3-3.6;
>
> ii. Tampering with any facility of the utility;
>
> iii. Fraudulent representation in relation to the use of service;
>
> iv. Customer moving from the premises, unless the customer requests that service be continued;
>
> v. Providing a utility's service to others without approval of the utility;
>
> vi. Refusal to contract for service where such contract is required;
>
> vii. Connecting and operating in such manner as to produce disturbing effects on the service of the utility or other customers;
>
> viii. Failure of the customer to comply with any reasonable standard terms and conditions contained in the utility's tariff;
>
> ix. Where the condition of the customer's installation presents a hazard to life or property; or
>
> x. Failure of customer to repair any faulty facility of the customer. . . .
>
> [N.J.A.C. 14:3-3A.1.]

The self-help actions of petitioners implicate several of the subsections to paragraph 5 above, including (i), (ii), (v), (vi), (viii), (ix), and (x). The primary arguments of the petitioners at the hearing were that the wire was safe and that JCP&L should have discriminated between 589 Englishtown and 381 Mount Mills when it decided to shut off the power on May 24. I **CONCLUDE** that whether the electric extension cord run by Salter between these buildings, all of which he owned, was actually safe is not the standard to be used to judge the legality of the shut-off action by JCP&L. Nor is petitioner the judge of whether it was safe. If that was the standard, the Department of Community Affairs and most municipalities could do away with their code officials. Salter might have just been lucky that no one was hurt or that, according to him, the power never tripped off.

Here, Salter refused to reconnect Town Sweet Farms to the public utility under its own account [subparagraph (vi)] and also opted not to purchase a generator. Instead, as found above, he provided the service from 381 Mount Mills to Twin Sweet Farms for its use without approval of JCP&L [subparagraph (v)]. When discovered, Salter refused reasonable access to JCP&L to inspect the connections he had made [subparagraph (i)], made it impossible for JCP&L to assure itself of the safety of the connections notwithstanding lack of municipal approvals [subparagraph (ix)], and failed to immediately repair the faulty facility [subparagraph (x)].[8] Accordingly, I **CONCLUDE** that JCP&L had the right to discontinue utility service. The legal questions that remain are whether the company followed proper procedure in exercising that right and whether it had the right to encompass 589 Englishtown in the discontinuance action.

On the latter point, Salter took the position that it should have been obvious to JCP&L that 589 Englishtown was not the source of electricity to Twin Sweet Farms because those structures were approximately 400 feet apart, several hundred feet farther apart than the distance bridged by Twin Sweet Farms and 381 Mount Mills. Further, Gibbs had walked to 589 Englishtown and saw no unauthorized connections or meter tampering. I **CONCLUDE** that those arguments are unavailing under the circumstance of his refusal to allow either JCP&L or Monroe Township to conduct a proper and thorough inspection of any of the properties on March 29. I also hold that it is significant that legally, Robert Salter is the title owner of all three properties. He never updated the utility company's records with respect to the account holder on Twin Sweet Farms and 381 Mount Mills, leaving those accounts in his deceased mother's name instead. Nevertheless, he was the true account holder on all of these services.

Petitioner is also the person who decided to run the cord from 381 Mount Mills and the farm stand. Therefore, Salter is the person responsible for providing service to "others without approval of the utility." Further, BPU regulations do address the issue of

[8] Both the Monroe Township electrical subcode official and JCP&L gave the Salters a reprieve in the sense that immediate action and/or citations were not issued. If petitioners had obtained the reconnection permit and cut-in card in early April instead of waiting until late June, they could have avoided the loss of service to 589 Englishtown Road altogether.

whether a residential account can be disconnected due to a dispute with a separate business account: "If a customer receives both residential and business utility service, nonpayment for business service shall not be a reason for discontinuance of residential service, except in cases of diversion of service pursuant to N.J.A.C. 14:3-7.8." N.J.A.C. 14:3-3A.2(c). If petitioners wanted to avoid having JCP&L paint 589 Englishtown with the same unauthorized brush applied to 381 Mount Mills, Salter should have permitted JCP&L to thoroughly inspect all the properties. Having legal control over both residential accounts and the business account, I **CONCLUDE** that the intentional diversion of service from 381 Mount Mills to Twin Sweet Farms by Salter provided sufficient grounds for discontinuance of all three utility accounts. As set forth below, this conclusion is buttressed by equitable principles.

I must also determine if the company complied with the notice and other procedural requirements established by the BPU as a precondition to discontinuance. Having concluded above that this discontinuance was not for nonpayment, I must also **CONCLUDE** that the notice requirements specific to nonpayment situations are inapplicable. N.J.A.C. 14:3-3A.2 and -3A.3. Those regulations provide that the initial notice of a service disconnect "shall be postmarked no earlier than 15 days after the postmark date of the outstanding bill" and "shall provide the customer with at least 10 days written notice of the utility's intention to discontinue service." By contrast, in the present circumstance of a diversion of service, JCP&L was only required to provide "reasonable notice . . . to the extent reasonably possible." N.J.A.C. 14:3-3A.1(d). I **CONCLUDE** that JCP&L did provide such reasonable notice on March 29, 2006, by Gibbs who exercised reasonable discretion on the spot to order discontinuance of service due to a noncompliant and potentially hazardous extension cord.[9]

Additionally, I **CONCLUDE** that petitioners had proper and adequate notice that their electric utility service was going to be shut off. They had actual notice on March 29 that the power was going to be shut off that day. The fact that it was not successfully

accomplished by JCP&L until May 24 did not vitiate the notice they received. See Buczek v. PSE&G, 92 N.J.A.R.2d (BRC) 13 (discontinuances took place, in both accounts, after the passage of approximately two months). The restoration of service, as discussed above, was in the hands of petitioners:

> (a) Service shall be restored within 12 hours[10] upon proper application when:
>
> 1. All of the conditions under which such service was discontinued are corrected;
>
> [N.J.A.C. 14:3-3A.9.]

While this is not an instance in which one utility customer has complained of high bills on a "good faith" belief that someone else has diverted their service without their knowledge, the BPU regulations relating to such type of diversion investigation can provide some additional guidance to the present case.

> (d) Each utility shall investigate alleged diversions as follows:
>
> 5. The utility shall have the right of reasonable access pursuant to N.J.A.C. 14:3-3.6. For purposes of utility access, **the alleged diversion is presumed to constitute a hazardous condition until the utility investigates**;
>
> 6. If, as a result of such investigation, the utility determines that the service from the pipes and/or wires serving the tenant-customer has been diverted, the utility shall notify the landlord or his or her agent and instruct him or her to correct the diversion within 30 days through rewiring or repiping. However, **this provision shall in no way prohibit a utility from disconnecting service if the utility determines that an unsafe condition exists**;
>
> 7. If a diversion is found, the utility shall attempt to determine the identity of the beneficiary;
>
> [N.J.A.C. 14:3-7.8 (emphasis added).]

[10] Again, I conclude that the timing of the restoration for Monday instead of Friday after the receipt of the cut-in card was de minimus under all the circumstances of this particular situation.

In sum, JCP&L had the right to disconnect service to 589 Englishtown on the basis of the unsafe condition created by Salter's unauthorized extension of electric power to the farm stand and it did so in a manner that in all material respects conformed to the applicable BPU regulations.

Lastly, petitioners argued that they should have been the beneficiary of an exception from this discontinuance because of Mrs. Salter's medical needs for electricity for her leg condition. Even if the exception for a medical emergency were applicable to discontinuance of utility service on grounds other than nonpayment, N.J.A.C. 14:3-3A.2(e)(4), I **CONCLUDE** that the petitioners have not met their burden of proof on this issue.

N.J.A.C. 14:3-3A.2(e)(4) provides

> (e) A utility shall not discontinue a customer's service for nonpayment under the following circumstances:
>
> 4. If a customer meets the conditions for a medical emergency in (i) below, a utility shall not discontinue service except in accordance with (i) below;
>
> * * *
>
> (i) Discontinuance of residential service for nonpayment is prohibited for up to 60 days if a medical emergency exists within the residential premises, which would be aggravated by a discontinuance of service. The following conditions apply to this 60-day prohibition on discontinuance:
>
> 1. The utility may require the customer to provide reasonable proof of inability to pay;
>
> 2. The utility may require the customer to submit a written physician's statement to the utility, stating the existence of the emergency, its nature and probable duration, and that discontinuance of service will aggravate the medical emergency[.]

On the basis of the preponderance of the competent and credible evidence summarized in the findings of fact above, I **CONCLUDE** that JCP&L was not aware of Mrs. Salter's

non-life-threatening condition before June 16 and then, only by way of unverified letter of counsel.

Furthermore, I **CONCLUDE** that petitioners are not entitled to any relief herein under the equitable doctrine of clean hands. The "clean hands doctrine" is a judicial principle which requires denial of relief to a party who is himself guilty of inequitable conduct in reference to the matter in controversy. Ballentine's Law Dictionary 208 (3d ed. 1969); 27 Am. Jur. 2d Equity § 136 at 667 (2008). "In simple parlance, it merely gives expression to the equitable principle that a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit." Faustin v. Lewis, 85 N.J. 507 (1981).

> When a petitioner asks a tribunal for equitable relief, he must be free of wrongdoing toward the respondent with regard to the transaction for which he seeks relief and if he is not, the tribunal in its discretion may deny equitable relief on the ground of unclean hands.
>
> [Rank v. Trenton Water Works, 97 N.J.A.R.2d (BRC) 1.]

It has been generally accepted in New Jersey that Administrative Law Judges have the discretion to utilize equitable theories of law to resolve cases before them. Hackensack v. Winner, 82 N.J. 1, 30 (1980); see also Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 169 N.J. 135, 158 (2001); Elizabeth v. Bd. of Pub. Utility Comm'rs, 99 N.J.L. 496 (E. & A. 1924). But that discretion "must be tempered by a full appreciation of an administrative agency's statutory foundations, its executive nature, and its special jurisdictional and regulatory concerns." Hackensack, supra, 82 N.J. at 30. The Supreme Court analyzed the special interests thusly:

> The utilization of court-made procedural tools in administrative proceedings must depend in the final analysis upon the nature of the agency's regulatory responsibilities toward the subject matter of the controversy as well as toward the particular parties appearing before it. Moreover, because administrative agencies serve in part to effectuate the constitutional obligation of the executive branch to see that laws are faithfully executed, N.J. Const. (1947), Art. V, § I, par. 11, the public interest is an added dimension in every

> administrative proceeding. That interest is necessarily implicated in agency adjudications, and, in a sense, the public is an omnipresent party in all administrative actions.
>
> [Ibid. (citations omitted).]

Here, petitioners were the direct cause of any confusion on the part of JCP&L as to the exact residential location from which the extension of electrical power for the farm stand and the greenhouses was being drawn. The regulations relating to diversion of service and disconnection of service are for the protection of both petitioners and the general public. The petitioners should not be heard to complain now that JCP&L did not exercise sufficient caution to differentiate between 381 Mount Mills, which was occupied by petitioners' sister's house but was owned by Robert Salter with an electric utility account still in the name of his deceased mother, and their own homestead at 589 Englishtown. Salter owned all the properties and exercised dominion and control over them. If he had permitted a reasonable but thorough inspection by JCP&L and Monroe Township of the inside electrical service at 381 Mount Mills, his complaint that JCP&L should not have cut service to 589 Englishtown would merit more consideration. Even in this highly regulated context of a utility service, application of the clean hands doctrine to estop petitioners' complaint is warranted.

ORDER

It is herein **ORDERED** that the complaint of Robert and Kathleen Salter against Jersey Central Power & Light Company for discontinuance of service to their home at 589 Englishtown Road in violation of BPU regulations be and the same is herein **DISMISSED** with prejudice.

As set forth above, the parties agreed to the entry of two Stipulations of Partial Settlement, which narrowed the issues to be heard herein. As evidenced by the signatures of the parties or their representatives, I **ORDER** that these two voluntary settlements be **ADOPTED** and made part of the record as fully disposing of the specific issues set forth therein and as consistent with law.

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, N.J. 07102,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties

Gail M. Cookson

June 8, 2009
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency: 6/8/09

J. Lloyd Longo

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioners:

Robert Forman Salter
Kathleen Salter
Elmira "Mimie" Cook

For Respondent:

Robert Downey
Amy Gibbs
Steven Seidel

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

P-1 Hand drawing of property
Letter from Michael K. Sullivan, Esq. to Amy Gibbs, JCP&L, dated June 16, 2006
Letter from Michael K. Sullivan, Esq. to Amy Gibbs, JCP&L, dated June 26, 2006
Gluck Walrath, LLP Billing Statement to Salter, dated July 7, 2006

P-5 First Energy Summary Sheet Residential Service to General Service, 381 Mounts Mills Road and Twin Sweet Farm, dated May 2, 2006

P-6 Envelope

P-7 Satellite image

P-8 Satellite image

P-9 Satellite image

P-10 JCP&L Customer Service Logs

P-11 Police Incident Report, dated April 4, 2006

For Respondent

Electrical permit and cut-in card, Monroe Township, dated June 22, 2006

Hand drawing of property with additional annotations

JCP&L e-mail communication with screen shot, Hanlon to Gibbs, dated May 9, 2006

Display Service Notifications screen shots, dated March 29, 2006

R-5 Display Service Notifications screen shots, dated May 24, 2006.

R-6 JCP&L Tariff, Original Sheet No. 17, dated August 1, 2003

R-7 Customer Interaction Center screen shot, dated May 25, 2006

R-8 Customer Interaction Center screen shot, dated May 24, 2006