

Appellate Division Rules BPU Did Not Have Exclusive Primary Jurisdiction Over Negligence Claims

by Dennis C. Linken on July 19, 2013

The doctrine of primary jurisdiction, pursuant to which courts defer to administrative agencies, has been widely recognized for years. The doctrine is based upon the expertise of administrative agencies, developed through their exclusive jurisdiction, particularly where the subject matter is highly technical.

The doctrine is frequently applied in cases involving the Board of Public Utilities (“BPU” or “Board”). This is especially true given the highly complex nature of the Board’s jurisdiction, pertaining to, for example, the transmission and distribution of electric energy. Application of the doctrine is not universal, however, and there are situations in which a court will choose to retain the matter itself, rather than defer to the BPU. Such was the case in *Chickara v. Jersey Central Power & Light Co.*, ___ App. Div. ____ (2013).

The Estate of James Chickara brought suit against JCP&L in the Superior Court of New Jersey, Law Division, Monmouth County, arguing that the company’s negligence in terminating electric service to Mr. Chickara’s home led to his death. Mr. Chickara allegedly suffered from congestive pulmonary obstructive disease and a heart condition, thereby requiring the use of an electric breathing device. JCP&L claimed that it had terminated service to Mr. Chickara following a billing dispute over more than \$30,000.00. Noting the BPU’s jurisdiction over “all services necessary for the transmission and distribution of electricity and gas, including but not limited to safety, reliability, meter reading and billing,” JCP&L moved for a dismissal of the Complaint and, failing that, a transfer of the case to the BPU. The trial court denied the motion without prejudice, following which the Appellate Division granted leave to appeal.

In its opinion affirming the trial court decision, the Appellate Division recognized the extensive scope of regulation exercised by the BPU over power companies, involving many types of disputes between such companies and their customers. Indeed, the court went on to take note of cases holding that the legislature intended the BPU to have “the widest range of regulatory power over public utilities.” On that basis, the court opined, “any dispute about whether decedent owed defendant [money] and whether defendant was entitled to terminate services as a result, would appear to fall within the BPU’s primary jurisdiction.” The plaintiff successfully argued, however, that “questions regarding whether defendant was negligent in terminating services and whether that negligence was a proximate cause of decedent’s death, fall outside the scope of the BPU’s jurisdiction.”

The Appellate Court accepted the proposition that some questions regarding the provision of “safe and adequate” electric service may fall within the BPU’s exclusive jurisdiction but that customer-damage claims for negligence premised upon negligence might not. As the court found in a previous case, the BPU’s conclusions about whether a utility had satisfied agency regulations or had complied with BPU orders may be probative as to whether the utility had been negligent, but are not determinative of the issue. On that basis, and because the Board’s findings would not control, the Court decided that the BPU did not have exclusive primary jurisdiction over such damage claims.

Also of note, in the Appellate Court’s eyes, was that fact that the trial court did not finally resolve whether the BPU had jurisdiction to determine any aspect of the lawsuit. Instead, the trial court determined that the jurisdictional question could not be decided without the development of a full record. Accordingly, the court found no abuse discretion in the denial of JCP&L’s motion.

The court’s opinion leads to the inevitable conclusion that, even if JCP&L’s actions were in compliance with BPU regulations, and even if JCP&L was legally entitled to terminate service, doing so might still constitute negligence, thereby giving rise to liability.

If you have any questions about this case or would like to discuss the legal issues involved, please contact me, Dennis Linken, or the Scarinci Hollenbeck attorney with whom you work.