



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

NAOMI DRUMMOND,  
Petitioner

V.

VERIZON NEW JERSEY, INC.  
Respondent

) ORDER ADOPTING  
) INITIAL DECISION  
)  
)  
)  
)  
) BPU Docket No. TC11010045  
) OAL Docket No. PUC 6769-11

Parties of Record:

**Naomi Drummond**, Pilesgrove, New Jersey, appearing *pro se*  
**William D. Smith, Esq.**, on behalf of Respondent, Verizon New Jersey, Inc.

BY THE BOARD<sup>1</sup>:

On January 31, 2011, Naomi Drummond ("Petitioner" or "Ms. Drummond") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to service outages which occurred in 2010 and service repairs which were performed by Verizon New Jersey, Inc. ("Respondent" or "Verizon").

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 filed at OAL on June 14, 2011 and assigned to Administrative Law Judge ("ALJ") W. Todd Miller.

Petitioner subscribes to Verizon for landline telephone and internet service. Ms. Drummond resides in Salem County which is a rural area of New Jersey. Petitioner experienced numerous outages from March 2010 through December 2010. There were long delays in responding to Ms. Drummond's service repair requests and accordingly Ms. Drummond claims that poor service is the standard. The Petitioner requests that Verizon be required to answer for its poor

<sup>1</sup> Commissioner Joseph L. Fiordaliso did not participate.

service through an investigation, audit or other forum. The Respondent's failure to act under the circumstances was, according to the Petitioner, unreasonable and an investigation into service practices of Respondent is warranted. Petitioner seeks that Verizon amend its tariff and/or the Board adopt regulations that would require a three-day restoration and repair period for residential outages, with the exclusion of catastrophic weather events.

On January 27, 2012, Verizon filed a motion for summary decision. Opposition papers were filed by Ms. Drummond on March 12, 2012 and responded to by Verizon on March 30, 2012.

On April 26, 2012, the ALJ rendered an Initial Decision, finding that the core issue before the court was the establishment of a reasonable time for residential repairs in semi-rural areas. ID at 3. Thus, the relief sought is beyond the degraded service the petitioner had experienced. Moreover, ALJ Miller found that the Petitioner's immediate technical problems were resolved and that the remedies sought involve systemic issues of wider magnitude impacting large segments of the service area. ID at 6. Because the matter involves such a broad arena, the ALJ found that the case does not comport with the traditional characteristics of a contested case as that term is defined at N.J.A.C. 1:1-2.1 and that amendments to the tariffs or administrative code or some other public process is in order. Accordingly, ALJ Miller referred the case back to the Board to address the issues raised by the Petitioner in an informal complaint or to take other action as it deems necessary and appropriate. ID at 8. As to all other motions, including Petitioner's motion for discovery and Verizon's motion for fees, the ALJ dismissed them without prejudice as moot. Ibid.

At its May 23, 2012 agenda meeting the Board issued an Order of Extension in this matter, which enables the Board to render a final decision in this matter no later than August 2, 2012.

The thrust of the Petitioner's arguments rest in the desire for improved service quality from Verizon. While the existing administrative code provides provisions for the monitoring overall of a utility's service quality, Verizon's service quality is subject to a comprehensive plan wherein the Board, through various service quality standards and metrics set forth in Verizon's Plan for Alternative Regulation approved by the Board on August 19, 2003, in Docket No. TO01020095 ("PAR-2"), monitors the provision of service to its customers.

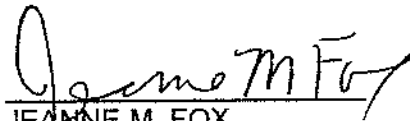
Prior to the issuance of the ALJ's decision, the Board, on March 12, 2012, in response to several complaints received by Verizon customers, launched an investigation to review Verizon New Jersey's service quality issues. I/M/O the Board's Review of Verizon New Jersey Service Quality Issues, Docket No. TO12020156 ("Service Quality Investigation"). On May 9, 2012, the Board conducted a public hearing in the matter to gather information. The Petitioner attended the public hearing and voiced her concerns regarding the service provided by Verizon.

In light of the foregoing, the Board HEREBY FINDS that it is appropriate to incorporate the concerns raised by the Petitioner into the record in the Board's Service Quality Investigation where they can be fully addressed in a thorough investigation of Verizon's service quality. The Board HEREBY ADOPTS the Initial Decision in its entirety.

DATED: 7/18/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

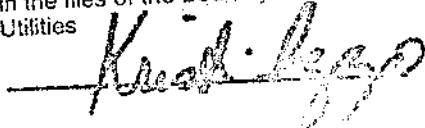
  
JEANNE M. FOX  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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



NAOMI DRUMMOND

V.

VERIZON NEW JERSEY, INC.

BPU DOCKET NO. TC11010045  
OAL DOCKET NO. PUC6769-11

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. PUC 6769-11

AGENCY DKT. NO. TC11010045

**NAOMI DRUMMOND<sup>1</sup>,**

Petitioner,

v.

**VERIZON NEW JERSEY, INC.,**

Respondent.

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**Naomi Drummond**, petitioner, pro se

**William D. Smith, Esq.**, for respondent

Record Closed: April 2, 2012

Decided: April 26, 2012

BEFORE **W. TODD MILLER, ALJ**:

**STATEMENT OF THE CASE**

On January 31, 2011, the Board of Public Utilities (BPU or Board) received petitioner's Naomi Drummond's (petitioner) complaint seeking an Order directing Verizon to amend its Tariff; to provide repair service within three days of outages; and to promulgate these changes in the administrative code, as well as other similar relief. Petitioner experienced numerous outages for an extended period in 2010. Verizon's

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<sup>1</sup> Petitioner is a retired New Jersey Administrative Law Judge and worked out of the Trenton Office of Administrative Law. This matter was assigned to the undersigned and I am located in the Atlantic City Office of Administrative Law. Petitioner retired prior to my becoming an Administrative Law Judge.

repairs initially were not satisfactory. However, after several months, Verizon finally located and resolved the problem. Petitioner does not assert a violation of an existing regulation and does not seek a remedy that is personal to her. Rather petitioner wants an investigation of Verizon's repair policy together with revisions to Verizon's Tariff and changes to the administrative code, so that others do not go through the same experience. For the reasons discussed below, I **CONCLDUE** that the action filed by petitioner is not a "contested case." The issues presented are not appropriate for an adjudicatory hearing before the Office of Administrative Law (OAL). Therefore the matter is referred back to the BPU for disposition as it deems appropriate. All other motions related to discovery and fees are **DENIED** as moot.

### PROCEDURAL HISTORY

The petitioner requested a fair hearing and the matter was filed at the OAL on June 14, 2011, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. On January 27, 2012, Verizon filed a motion for summary decision. Opposition papers were filed by petitioner on March 12, 2012, and Verizon filed its reply brief on March 30, 2012.

### STATEMENT OF FACTS

Petitioner, Naomi Drummond, is a subscriber to services provided by Verizon. This includes landline telephone and internet service. Petitioner resides in a rural area in Salem County. During the period March 2010 through December 2010, petitioner experienced repeated outages for telephone and internet as well as regular telephone static. The outages and static generally occurred during periods when there were storms that included rain or high winds.

Numerous service calls were placed by petitioner during the relevant period. Petitioner asserts that Verizon's staff members provided only "lip service" to her initial complaints. This was unacceptable. There were often long delays in Verizon's

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Consequently, there has never been any formal or informal professional relationship between petitioner and this ALJ.

response or the repairmen were unable to diagnose or isolate the problem and make the appropriate repairs.

Petitioner contends that she is receiving sub-par service because she lives in a rural area. Petitioner admits that in November 2010 Verizon dispatched a "cable man" who cleaned out and spliced a cable in a sealed box. The box was full of water. The outages and static which petitioner experienced were "fixed at last" after this repair.

Finally, petitioner urges that Verizon must be required to answer for its lack of proper service in the form of an investigation, audit or otherwise. The OAL, as an arm of the BPU, is the proper forum to conduct the investigation. Petitioner contends that Verizon's actions were unreasonable and that an investigation of its service practices should ensue. Petitioner's demands relief for herself and others similarly situated in rural areas.

The OAL offers a forum wherein a record can be created and either an Administrative Law Judge or the BPU can fashion the appropriate remedy. Petitioner seeks an Order requiring Verizon to amend its Tariff and/or for the BPU adopt administrative regulations that would require a three-day restoration and repair period for residential outages, except under circumstances involving catastrophic weather events.

### CONCLUSIONS

The BPU has the broad authority to regulate public utilities. N.J.S.A. 48:2-16 et seq. Included among its power is the authority to conduct investigation upon the filing of a complaint. N.J.S.A. 48:2-19. The Board may also refer contested cases to the OAL for disposition.

The core issue presented by petitioner is "[w]hat is a reasonable time for residential repair, especially in semi rural area?" (Brief at page 1). The relief sought by petitioner is broader than the technical problems specific to her service. Petitioner demands new policies or regulations that changes the timeliness of service calls related

to telephone and internet outages or service quality issues. Verizon's primary challenge to petitioner's action is that it does not meet the definition of a "contested case" and is therefore beyond the jurisdiction of the OAL. Verizon suggest that what petitioner is really seeking is akin to rulemaking.

"Contested case" is defined at N.J.A.C. 1:1-2.1:

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

By contrast a "rule" is defined as:

A rule in New Jersey is an agency statement of general applicability and continuing effect that implements or interprets law, policy, procedure or practice requirements. The wide-spread continuing and prospective effect of an agency pronouncement is the hallmark of an agency rule. Shapiro, Rulemaking or Adjudication, 78 Harv. L. Rev. 921, 929-42 (1965)

37 New Jersey Practice, Administrative Law and Practice, § 2.2, at 36-37 (Steven L. LeFelt, Anthony Miragliotta & Patricia Prunty) (2d ed. 2000).

Typically, adjudicatory hearings are what the Administrative Procedure Act (APA) calls "contested cases." N.J.S.A. 52:14B-2(b). Contested cases are those in which the Constitution or a statute requires an adjudicatory hearing. Id. Adjudicatory hearings



may be granted at the discretion of the agency. In re Orange Savings Bank, 172 N.J. Super. 275, 283 (App. Div.).

Adjudicatory proceedings usually determine the legal rights and relations of specific individuals. Bally Mfg. Corp. v. New Jersey Casino Control Comm'n., 85 N.J. 325, 340 (1981); Shapiro, Rulemaking or Adjudication, 78 Harv.L.Rev. at 924, 930. These determinations often involve disputed factual issues and require evidence and cross-examination in an adversary proceeding, for proper resolution. N.J.S.A. 52:14B-9(c), -10(a) (1970 & Supp.1981).

On the other hand, administrative rulemaking involves broader policy judgments. Rulemaking proceedings develop facts through investigation so that rules of prospective application may be developed with input from all classes of affected interest. Boller Beverages, Inc. v. Davis, 38 N.J. 138, 154 (1962); Rulemaking or Adjudication, 78 Harv.L.Rev. at 935. Although rules generally apply to a large class of individuals, rules that affect specific parties are nonetheless valid if enough other characteristics of rulemaking are present. See Bally Mfg. Corp., supra, 85 N.J. at 343; Rulemaking or Adjudication, 78 Harv.L.Rev. at 924.

Here, petitioner raises service quality concerns. The administrative code already contains numerous provisions regarding telephone and other utility services. See, N.J.A.C. 14:3-3.7 (Interruption of service); N.J.A.C. 14:3-3.8 (Service call scheduling); N.J.A.C. 14:1-5.13 (Informal complaint in lieu of petition); N.J.A.C. 14:10-1A.7 (Customer complaints and trouble reports); N.J.A.C. 14:10-1A.9 (Adequacy of service); and N.J.A.C. 14:10-1A.10 (Service quality standards).

Likewise there are existing regulations for Tariffs. See, N.J.A.C. 14:1-5.11 (Tariff filings which do not propose increases in charges to customers); N.J.A.C. 14:3-1.3 (Tariffs).

Since there is an established regulatory system for telephone and internet service, any amendments or additions to the code or utility Tariff would logically proceed by rulemaking or other public process.

It is undisputed that petitioner's technical problems were resolved in November 2010. (Complaint at page 3). The gravamen of petitioner's request for relief is prospective in nature -- in the form of regulatory changes to the telecommunications rules or Verizon's Tariff. These remedies involve policy considerations that impact large segments of the service area. The claims are not specific to petitioner and do not involve a dispute relevant to the existing regulations. Therefore this case does not include the characteristics of a contested case -- that is, the need for an adjudicatory or adversarial hearing, involving presentation of evidence and cross-examination of witnesses.

I **CONCLUDE** that the matter presented is not a contested case that requires an adjudicatory hearing. It does not involve contested facts, legal rights and relations of specific individuals. The remedies sought by petitioner are amendments to the administrative code or Verizon's Tariff. Changes to the administrative code are properly implemented by rulemaking. Likewise, changes to the basic format and content of a utility Tariff should also be implemented by rulemaking or some other public process.

That said, it doesn't mean petitioner's claims are without merit. Clearly petitioner experienced problematic service and repairs between the period March 2010 through November 2010. The technical nature of the problems, the reasons for the delays in service or repairs, and potential remedies to prevent future occurrences (for petitioner or similarly situated subscribers) are better resolved by; 1) an informal complaint in lieu of petition (N.J.A.C. 14:1-5.13); or 2) a petition for a change in rule (i.e rulemaking) N.J.S.A. 52:14B-4(f). (An interested person may petition an agency to promulgate, amend, or repeal any rule).

An informal complaint in lieu of petition offers petitioner the assistance of the BPU staff. Staff possesses the technical expertise to evaluate the causes of service problems without burdening petitioner with the costs of hiring experts or the need to engage in an adversarial hearing with a large corporation. It also spares petitioner the time and expense of extensive reciprocal discovery. Staff can initiate an investigation, demand Verizon's cooperation and gather documents and other information through its

investigative authority. Moreover, Staff can assess the problems and, if necessary, make recommendations to the BPU or Verizon. This process seems specifically designed for petitioner's situation. It is user friendly and less arduous.

A rulemaking petition is also appropriate. While rulemaking is more formal, it perfects the process by allowing commentary and input by all those that might be impacted by the proposed changes. Again broad policy changes to the regulations or Tariffs should incorporate participation from all interests that may be impacted. N.J.S.A. 52:14B-4 (notice and hearing for rulemaking). This procedural requirement cannot be accommodated by an adjudicatory hearing.

I note that the cases cited by petitioner involves enforcement of existing rules or regulations. For example, petitioner cites Golden Nugget v. Atlantic City Electric Company, 226 N.J. Super. 118 (App. Div. 1988) noting that the case was remanded to the BPU/OAL to make a policy decision regarding what was a reasonable time for the company to recover the cost of extending its service. (Petitioner's brief at page 2-3). Petitioner relies upon Golden Nugget for the assertion that the OAL can make policy decisions as part of an adjudicatory hearing.

I am mindful that some policy or regulatory action might emanate from contested cases heard at the OAL level, but that does not permit the OAL to usurp policymaking authority in the absence of the contested case. Such is the case here. And Golden Nugget is distinguishable from rulemaking because the central issue in Golden Nugget was enforcement of a line extension statute (N.J.S.A. 48:2-27). The OAL was called upon to make finding of facts and conclusions of law, as to specific parties, regarding the applicability and enforcement of an existing a statute. The OAL was not promulgating a new statute or regulation.

Petitioner also cites utility ratemaking cases as a basis for the OAL to generated agency policy. Califon Water Company, 1 N.J.A.R. 414, 1980. (Brief at page 3). The legislature has enacted statues that specifically recognized ratemaking as "contested" cases. N.J.S.A. 48:2-21. When a public utility seeks to increase an existing rate, the BPU has the power, after hearing, to determine whether such increase is "just and

reasonable.” Id. The BPU may, after hearing, fix “just and reasonable” rates when it determines that an existing rate is “unjust, unreasonable, insufficient or unjustly discriminatory or preferential.” Id. Again ratemaking cases primarily involve findings of fact and conclusion of law as to a fair rate of return on investment. Any policy generated from rate cases is ancillary to bona fide contested issues transmitted to the OAL. The policy arises much like common law. But the absence of a contested case is jurisdictional.

Petitioner also cites Madeline v. GPU Inc., 332 N.J. Super. 140, 152, (App. Div. 2000). In Madeline, plaintiff sought damages against the utility for negligence. Clearly a negligence claim is ripe for a trial type hearing. The claim involves findings of facts and conclusions of law related to a deviation from a standard of care and the imposition of monetary relief, if appropriate.

### ORDER

Based upon the foregoing, petitioner’s complaint is referred back to the BPU as it does not contain justiciable “contested” issues appropriate for the OAL to resolve at a hearing. The BPU may address the issues raised by petitioner as an informal complaint (N.J.A.C. 14:1-5.13) or take other action as it deems necessary and appropriate. All other motions including petitioner’s motion for discovery and Verizon’s motion for fees are dismissed without prejudice as moot.

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, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 26, 2012

DATE



W. TODD MILLER, ALJ

Date Received at Agency:

Date Mailed to Parties:

/sd

**DOCUMENTS CONSIDERED**

For petitioner:

Petition filed January 31, 2011

March 12, 2012, Opposition Brief

January 26, 2012, Motion to Compel Answers and Other Relief

For respondent:

January 27, 2012, Motion for Summary Decision and Brief

February 27, 2012, Opposition Brief to the Motion to Compel Answers

March 30, 2012, Reply Brief