

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Frasier v. Niagara Mohawk Power Corp.

2026 NY Slip Op 01110 · No. CV-25-0456 · Decided February 26, 2026

SUMMARY

The Appellate Division, Third Department, reversed an order staying a tort action against Niagara Mohawk Power Corporation and referring stray-voltage issues to the Public Service Commission under the primary jurisdiction doctrine. The court held that the plaintiffs' negligence, nuisance, trespass, and related claims involve common-law issues of duty and causation that do not require prior agency resolution, and that regulatory compliance does not establish due care. The court concluded that any complex technical issues could be addressed through party experts, a referee, or a court-appointed neutral expert.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Garry, P.J.; Ceresia, J.; Fisher, J.; McShan, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	February 26, 2026
DOCKET	CV-25-0456
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of Supreme Court, Fulton County, that granted defendant's motion to stay the tort action and refer issues concerning stray voltage to the Public Service Commission under the primary jurisdiction doctrine.
STANDARD OF REVIEW	The Appellate Division reviewed Supreme Court's application of the primary jurisdiction doctrine and reversed on the law.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Rick Frasier, Elmvue Farms, LLC v. Niagara Mohawk Power Corporation, doing business as National Grid

TOPICS

administrative law

appellate procedure

negligence

duty of care

equitable relief

PRACTICE AREAS

administrative law

torts

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the primary jurisdiction doctrine required a stay of plaintiffs' common-law tort action and referral of stray-voltage issues to the Public Service Commission.
2. Whether the Public Service Commission's regulatory authority and specialized expertise made agency resolution necessary before the court could adjudicate plaintiffs' claims and potential abatement remedy.

HOLDINGS

1. Referral and a stay were not warranted because resolution of plaintiffs' common-law tort claims did not first require resolution of issues placed within the Public Service Commission's special competence.
2. The trial court may rely on the parties' experts and, when appropriate, appoint a referee or neutral expert to assist with complex technical issues.
3. The possibility of injunctive relief did not require referral because Supreme Court could order abatement of problematic stray voltage if plaintiffs proved that it existed.

KEY QUOTATIONS

“The doctrine of primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views” ([*2])

“In sum, although the PSC's opinion as to the existence, origin or degree of stray voltage may be informative, resolution of plaintiffs' claims do not first require resolution of issues placed within the agency's special competence.” ([*4])

FACTUAL BACKGROUND

Plaintiffs operated a cattle and dairy farm served by defendant's electrical system. After plaintiffs reported behavioral changes, reduced milk production, fertility problems, and other herd health issues, defendant investigated and found stray voltage slightly exceeding its internal remediation threshold, then installed a neutral isolator. Plaintiffs later commenced tort claims alleging that stray voltage continued or worsened after defendant's repair and rewiring efforts, seeking damages and abatement.

PROCEDURAL HISTORY

Plaintiffs commenced a tort action alleging negligence, private nuisance, trespass to land, and trespass to chattels, seeking damages and mandatory injunctive relief concerning alleged stray voltage at their dairy farm. After discovery and unsuccessful repair efforts, defendant moved for a stay and referral to the Public Service

Commission. Supreme Court granted the motion and ordered the Commission to determine whether harmful stray voltage existed, how to remediate it, and any other issues within its purview. The Appellate Division reversed.

DISPOSITION

reversed

CASES CITED

- Staatsburg Water Co. v. Staatsburg Fire Dist., 72 NY2d 147, 156
- Romine v. Laurito, 186 AD3d 913, 915
- Capital Tel. Co. v. Pattersonville Tel. Co., 56 NY2d 11, 22
- Calle v. National Grid USA Serv. Co., Inc., 230 AD3d 556, 556-557
- Heller v. Coca-Cola Co., 230 AD2d 768, 769
- Lauer v. New York Tel. Co., 231 AD2d 126, 129
- Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn., 33 NY3d 336, 341
- Matter of Cahill v. Public Serv. Commn., 69 NY2d 265, 272
- Miner v. Long Is. Light. Co., 40 NY2d 372, 380-381
- Holtz v. Niagara Mohawk Power Corp., 147 AD2d 857, 859
- Smith v. Consolidated Edison Co. of N.Y., Inc., 104 AD3d 428, 428-429
- Flex-O-Vit USA v. Niagara Mohawk Power Corp., 292 AD2d 764, 765-766
- Lane v. New York State Elec. & Gas, 99 AD2d 597, 597-599
- Riverdale Jewish Ctr. v. Brooklyn Union Gas Co., 237 AD3d 414, 415
- Township of Thompson v. New York State Elec. & Gas Corp., 25 AD3d 850, 851-852
- Brownsville Baptist Church v. Consolidated Edison Co. of N.Y., 272 AD2d 358, 359
- Guglielmo v. Long Is. Light. Co., 83 AD2d 481, 483-484
- Matter of Harkenrider v. Hochul, 38 NY3d 494, 522-523
- Kessler v. Kessler, 10 NY2d 445, 448-449
- Kaplowitz v. Borden, Inc., 189 AD2d 90, 93
- Zirinsky v. Zirinsky, 138 AD2d 43, 46
- Siewert v. Northern States Power Co., 793 NW2d 272, 286
- National Electric Safety Code