



Agenda Date: 9/13/12  
Agenda Item: VIIC

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

CUSTOMER ASSISTANCE

WASHINGTON COMMONS, LLC	)	ORDER OF EXTENSION
Petitioner	)	
	)	
V.	)	
	)	
PUBLIC SERVICE ELECTRIC AND GAS CO.	)	BPU DOCKET NO. GC08100906U
Respondent	)	OAL DOCKET NO. PUC12746-08


(SERVICE LIST ATTACHED)

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on August 8, 2012; therefore the 45-day statutory period for review and the issuing of a Final Decision will expire on September 24, 2012. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to fully review the record in this matter.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until November 8, 2012.

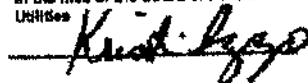
DATED: 9/13/2012

BOARD OF PUBLIC UTILITIES  
BY<sup>1</sup>:

  
ROBERT M. HANNA  
PRESIDENT

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

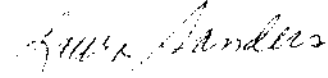


<sup>1</sup> Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 9/14/12

cc: Service List Attached

DATED: 9/14/12



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LAURA SANDERS, ACTING  
DIRECTOR & CHIEF  
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 9/17/12

Date Board mailed executed Order to Parties: 9/18/12

WASHINGTON COMMONS, LLC

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. GC08100906U

OAL DOCKET NO. PUC 12746-08

SERVICE LIST

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COPY



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

**INITIAL DECISION**

OAL DKT. NO. PUC 12746-08

AGENCY DKT. NO. GC08100906U

**WASHINGTON COMMONS, LLC,**

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC AND**

**GAS COMPANY,**

Respondent.

**Joseph R. Sorrentino**, Managing Partner, appearing pursuant to N.J.A.C. 1:1-5.4(a)5, for petitioner

**Sheree L. Kelly, Esq.**, for respondent, Public Service Electric & Gas Company

**Veronica Beke**, Deputy Attorney General for respondent Board of Public Utilities appearing pursuant to N.J.A.C. 1:1-5.4(a)3, (Jeffrey S. Chiesa, Attorney General of New Jersey, attorney)

Record Closed: February 15, 2012

Decided: August 3, 2012

BEFORE **MUMTAZ BARI-BROWN, ALJ:**

**STATEMENT OF THE CASE and PROCEDURAL HISTORY**

Petitioner, Washington Commons, LLC, (Petitioner) is a developer of condominiums at 311 Washington Street, Jersey City, New Jersey. Joseph R.

Sorrentino, Managing Partner of Washington Commons, LLC, filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges from December 2006 to May 2008, for gas services provided to the property by Respondent Public Service Electric and Gas Company (PSE&G or Respondent).

On December 31, 2008, the matter was transmitted to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52:14F-1 to 13 as a contested case. The hearing dates scheduled for December 11 and 18, 2009 and November 18, 2010, were adjourned at Petitioner's request and rescheduled for June 27, 2011. Due to the reassignment of the Deputy Attorney General, Respondent requested an adjournment of the hearing for June 27, 2011. The matter was rescheduled for February 15, 2012. Respondent requested an adjournment of the February 2012 hearing and on May 31, 2012, Respondent filed a Motion to Amend Answers to Join the Washington Commons Condominium Association, Inc. (Condo Association) as a party to this matter. After several telephone conferences the parties demonstrated good cause to adjourn the hearing scheduled on July 19, 2012, pending my ruling on Respondent's motion.

### **BACKGROUND**

On April 21, 2001, PSE&G issued a credit payment to Washington Commons in the amount of \$170,680.27. Washington Commons Condominium Association, Inc. is the subject of this billing dispute. Joseph R. Sorrentino, a managing partner of Washington Commons, LLC, claims the developer Washington Commons, LLC is owed the money, not the Condo Association.

PSE&G moves to amend the pleadings and join the Condo Association as a necessary and indispensable party. In the alternative, PSE&G moves to dismiss the petition.

Based on the moving papers I **FIND:**

1. Petitioner, Washington Commons, LLC is the developer of the sixty-eight unit condominium building located at 311 Washington Street, Jersey City, New Jersey.
2. Joseph R. Sorrentino is a managing partner of Washington Commons, LLC.
3. Respondent, PSE&G has provided gas utility service to Washington Commons, account number 21-950-671-01 since November 22, 2006.
4. The unit owners of the Washington Commons, LLC, 311 Washington Street, Jersey City, New Jersey formed Washington Commons Condominium Association, Inc.
5. On June 24, 2008, the Condo Association held its first meeting/transition election.
6. On September 30, 2008, the developer, Washington Commons, LLC, filed a complaint before the BPU and claimed it had been overcharged by PSE&G for the period November 2006 to May 2008.
7. PSE&G conducted an investigation and determined a credit was owed to account number 21-950-671-01.
8. On February 24, 2009, PSE&G issued a check in the amount of \$178,150.55 to Washington Commons, account number 21-950-671-01, c/o RELB PM at PO Box 6457, Jersey City, NJ.
9. The check was returned to PSE&G, undeliverable and un-cashed.
10. On April 21, 2009, PSE&G reissued the check in the amount of \$170,680.27 to Washington Commons, account number 0006723820002, PO Box 6457, Jersey City, NJ.
11. The Condo Association received and cashed the check.
12. Washington Commons, LLC claims ownership to the refund issued by PSE&G.

**PARTIES ARGUMENTS**

PSE&G acknowledges Petitioner Washington Commons, LLC filed a billing dispute before the BPU. PSE&G further acknowledges the customer was overcharged. PSE&G credited the account by issuing a check to the customer of record. The Condo Association cashed the check. Therefore, PSE&G contends the Condo Association is a necessary and indispensable party and must be joined as a third party under R 4:28-1(a).

Further, PSE&G notes the Condo Association is in possession of the disputed funds. However, OAL has no control over the Condo Association unless the Association is made a party. Moreover, OAL has jurisdiction over billing disputes between a public utility and its customers. Since Petitioner is a past customer and the Condo Association is a current customer, OAL has jurisdiction over this entire dispute and has the power to place the funds in controversy in escrow pending resolution of the dispute.

Additionally, PSE&G contends under N.J.A.C. 1:1-6.2(a), it should be free to amend their pleading to join the Association as a third party defendant. Here, joinder would increase judicial efficiency and expedience. Also, joinder is appropriate "pursuant to the entire controversy, res judicata, and collateral estoppel." City of Hackensack v. Winner, 82 N.J. 1, 31 (1980). Therefore, PSE&G submits it should be allowed to amend their Answer and join the Condo Association as a party.

Alternatively, PSE&G submits if OAL does not have jurisdiction to join the Condo Association the Petition against PSE&G should be dismissed. PSE&G maintains it has fulfilled its duty by issuing a check to the account holder. Consequently, the dispute over ownership of the refund check is between Washington Commons, LLC and Washington Commons Condominium Association, Inc., two private parties. PSE&G submits the dispute is best suited for a court of general jurisdiction. See Respondent's Brief at 7; Camden County v. Bd. of Trustees PERS, 97 N.J. A.R. 2d (TYP) 105 (June 18, 1997).

Petitioner, Joseph R. Sorrentino, managing partner of the developer, argues Washington Commons, LLC, is the "only entity with a current claim for a refund against PSE&G". The Condo Association has not filed a claim with PSE&G for the refund. Further, any dispute between the Washington Commons, LLC and Washington Commons Condominium Association, Inc. is separate and not related to this matter. Therefore, the refund covering the period between November 2006 and May 2008 is owed to the developer Washington Common's, LLC, not the Condo Association.

### DISCUSSION

Respondent PSE&G seeks to join the Condo Association because the Condo Association holds the funds in controversy. Generally, "unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice". N.J.A.C. 1:1-6.2(a). However, the Uniform Administrative Procedural Rules (UAPR) does not allow joinder of a third party, unless it is specifically authorized by statute or would cause injustice or unfairness. N.J.A.C. 1:1-1.3.

The OAL has acknowledged joinder of a third party under the doctrines of entire controversy, res judicata, and collateral estoppel. City of Hackensack v. Winner, 82 N.J. 1 (1980). In applying the single-controversy doctrine, the Court considered:

Whether the common issue could have been fairly, competently and fully tried and adjudicated together with and as constituent part of all other issues in the case before one agency so that fragmented and repetitious actions would be avoided, all relevant concerns addressed and the entire controversy concluded in a single proceeding.

[Winner, 82 N.J. at 31 (citations omitted).]

Thus, joinder may be appropriate if the issue is part of the "overall dispute between the parties, in order to lay at rest all their legal differences in one proceeding and avoid the prolongation and fractionalization of litigation." Tevis v. Tevis, 79 N.J. 422, 434 (1979).



I have carefully considered the parties' arguments. At first glance it might appear that joinder of the parties and the Condo Association would increase efficiency by eliminating the need for separate proceedings between Petitioner and the Association, and the Condo Association and PSE&G. Indeed, whether PSE&G refunded the overpayments to the correct entity turns on the pivotal question of which entity made the overpayments to PSE&G? The dispute is precisely between the developer and the Condo Association, which PSE&G seeks to join in the OAL forum. While third party practices are not within the scope of N.J.A.C. 1:1-1.3(a) the rule can be relaxed if adherence would result in unfairness or injustice.

Here, unfairness or injustice will not result if the Condo Association is not joined. There is no dispute over the accuracy of the over-billing. PSE&G has billed the proper amount and credited the account. The Condo Association is in possession of the disputed refund to which the developer claims ownership. The dispute is between two private parties over which entity is entitled to the refund. However, OAL does not have jurisdiction over disputes between private parties. See Camden County, 97 N.J.A.R.2d at 8. Also, "absent an express grant, administrative agencies do not have the power to exercise or perform a judicial function and may not determine damages, award a personal money judgment or promulgate an order requiring a pecuniary reparation or refund." See Integrated Telephone Service, PUC 5737-97, Initial Decision (December 29, 1999) <<http://lawlibrary.rutgers.edu/new-jersey-administrative-decisions-0>> (quoting Slowinski v. City of Trenton, 92 N.J.A.R.2d (BRC) 71, 72). Therefore, Washington Commons, LLC must proceed against the Condo Association in a court of general jurisdiction to recover the money to which it claims ownership. N.J.A.C. 1:1-1.3(b).

Based on the above, I **CONCLUDE** PSE&G has resolved the overcharge and credited the proper amount of refund to the customer's account. Therefore, PSE&G has fulfilled its duties. Consequently, all that remains is a dispute between two private parties, Petitioner and the Condo Association over ownership of the refund. I therefore **CONCLUDE** Petitioner has failed to state a claim to which relief can be granted.

**ORDER**

It is **ORDERED** that Respondent's Motion to Amend Answers to Join the Washington Commons Condominium Association, Inc. as a party to this matter is **DENIED**.

It is further **ORDERED** that the petition be **DISMISSED**.

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.



August 3, 2012

DATE

MUMTAZ BARI-BROWN, ALJ

Date Received at Agency:

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Date Mailed to Parties:  
df/sej

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