



**STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/**

CUSTOMER ASSISTANCE

WASHINGTON COMMONS, LLC,
Petitioner

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent

)
)
)
)
)
)
)
)
)
)

ORDER ADOPTING
INITIAL DECISION AND
SETTLEMENT WITH
MODIFICATON
BPU DOCKET NO. GC08100906U
OAL DOCKET NO. PUC 12746-08
and PUC 01407-13 (on remand)

Parties of Record:

Nicholas R. Buttafuoco, Esq., on behalf of Petitioner, Washington Commons, LLC.
Sheree L. Kelly, Esq., on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD¹:

STATEMENT OF THE CASE

This matter involves a petition by Washington Commons, LLC ("Petitioner") in which Petitioner contends that Public Service Electric and Gas Company ("PSE&G" or "Respondent") overcharged it by over \$100,000.00 for approximately a one-and a-half year period. Petitioner is the developer of a building comprised of condominium units located at 311 Washington Street in Jersey City, New Jersey (the "Property"). Washington Commons Condominium Association, Inc. ("Association") is an entity formed by the owners of the condominium units who, at some point, assumed the utility charges on the Property. The Association is not a party to this case.

BACKGROUND AND PROCEDURAL HISTORY

On October 10, 2008, Petitioner filed a petition with the Board of Public Utilities ("Board") seeking a formal hearing to resolve a billing dispute for utility charge. Respondent filed its Answer on November 26, 2008 wherein Respondent denied Petitioner's claims, argued that it provided Petitioner with appropriate rates for the correct amount of usage, and further argued that it conformed to its tariff, New Jersey Statutes and the regulations promulgated by the

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

Board. 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 assigned to Administrative Law Judge Mumtaz Bari-Brown ("ALJ").

The record discloses that, at some point after Respondent filed its Answer, Respondent issued a refund check on January 26, 2009 in the amount of \$178,150.00 to account number ending with 7101. The check was payable to "Washington Commons" and mailed on February 24, 2009 to Washington Commons c/o RELB PM at P.O. Box 6457 in Jersey City, New Jersey. The check was returned, uncashed, to Respondent as "undeliverable." On April 21, 2009, Respondent issued a new check for \$170,680.27 to account number ending with 0002. Respondent claimed that the difference between the first check and the second check was due to a credit applied to an account at the time the second check was issued. The second check, also issued to "Washington Commons," but was sent to the same address as the first check without the "c/o RELB PM" designation. The second check was received and cashed by the Association.

In correspondent dated April 24, 2012, the Association informed Respondent that it preliminarily believed that it had paid the utility charges in question and, as such, was entitled to the refund it received. However, the Association was still investigating the matter and asked Respondent to provide additional details as to the nature of the refund and time period it covered.

On June 4, 2012, Respondent filed a motion with the ALJ seeking to amend its Answer to join the Association because both Petitioner and the Association claimed any refund was their own. Respondent also noted that it would be precluded from re-litigating this matter in the future under the doctrines of collateral estoppel, entire controversy and res judicata should the Association be excluded from the proceedings. In the alternative, Respondent sought to dismiss the Petition in its entirety, arguing that it fulfilled its obligations under its tariff by issuing the refund check and the remaining issue, who was entitled to the refund, was a dispute between two private parties for which the OAL lacked jurisdiction.

On August 3, 2012, the ALJ issued an Initial Decision in which she denied Respondent's motion to join the Association as a party and granted Respondent's motion to dismiss the Petition.

By Order dated January 24, 2013, the Board affirmed the ALJ's decision to deny Respondent's Motion to join the Association and it denied the ALJ's decision to dismiss the Petition. The Board remanded the matter as there were numerous questions of fact still in dispute.

While this matter was pending at the OAL on remand, Petitioner and Respondent engaged in negotiations and entered into a Stipulation of Settlement ("Settlement") that was submitted to the ALJ. The Settlement provided that (a) by December 15, 2014, Petitioner would provide Respondent with cancelled checks for the period encompassing November 2006 to December 2008 as evidence of payment for the utilities on the Property during the time at issue; (b) in the event Petitioner could only provide some of the cancelled checks for the period in question, Respondent would review those cancelled checks; and (c) if Respondent verified that the Petitioner in fact paid for the utility services, it would issue an appropriate refund to Petitioner and debit the Association's account the commensurate amount.

By Initial Decision issued on November 3, 2014, and submitted to the Board on November 5, 2014, to which the Settlement was attached and made part thereof, the ALJ found that the Settlement was voluntary, the terms fully disposed of all issues in controversy arising from the

issuance of a refund check issued by PSE&G in the amount of \$170,680.04, and that it satisfied the requirements of N.J.A.C. 1:1-19.1.

DISCUSSION AND FINDING OF LAW

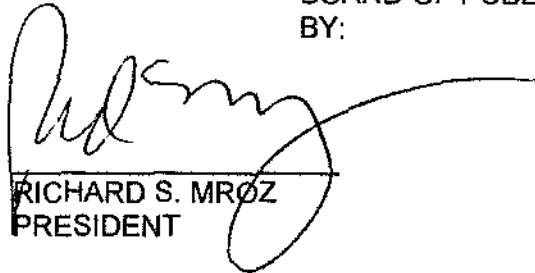
N.J.A.C. 1:1-19.1(b) provides that if the judge determines from the written stipulation that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

After review of the record and the Settlement, the Board **HEREBY FINDS** that Petitioner and Respondent voluntarily agreed to the Settlement as evidenced by their signatures, and that by the terms of the Settlement have fully resolved all outstanding contested issues in this matter. However, the Board notes that the last clause in the Settlement identifies and involves the Association. Specifically, the last clause reads "and debit the account of Washington Commons [Association], the account number ending with 0002 in the commensurate amount." The Board strikes this last clause of the Settlement as it addresses issues involving a non-party, the Association.

Accordingly, the Board **HEREBY ADOPTS** the November 3, 2014 Initial Decision and the Settlement executed by the parties as if fully set forth herein, but **MODIFIES** the Settlement by removing the last clause of the Settlement because the Association is not a party in this matter.

DATED: 1/21/15

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

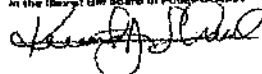

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


KENNETH J. SHEEHAN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



WASHINGTON COMMONS, LLC, PETITIONER

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY, RESPONDENT

BPU DOCKET NO. GC08100906U

OAL DOCKET NOS. PUC12746-08 and PUC01407-13 (on remand)

SERVICE LIST

Joseph R. Sorrentino
Managing Partner
Washington Commons, LLC.
6217 Avenue N
Brooklyn, New York 11234

Nicholas R. Buttafuoco, Esq.
Gaiimo & Associates
97 East River Road
Rumson, New Jersey 07760

Sheree L. Kelly, Esq.
PSEG Services Corporation
80 Park Plaza – T5G
Newark, New Jersey 07102-4194

Ayelet Hirschhorn, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, New Jersey 07101-45029

Eric Hartsfield, Director
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Julie Ford Williams, Chief
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

RECEIVED
2014 NOV 5 AM 2 07

NJ BPU
MAILROOM



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. PUC 01407-13

AGENCY DKT. NO. GC081 10908U

WASHINGTON COMMONS, LLC,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND

GAS COMPANY,

Respondent.

ON REMAND

OAL DKT. NO. PUC 12746-08

AGENCY DKT. NO. GC081 10908U

Nicholas R. Buttaruoco, Esq., for petitioner

Sheree L. Kelly, Esq., for respondent

Record Closed: October 30, 2014

Decided: November 3, 2014

BEFORE MUMTAZ BARI-BROWN, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) on January 31, 2013, for resolution as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F1 to -13.

The attached Stipulation of Settlement was submitted on October 30, 2014, indicating the terms of agreement which are incorporated herein by reference.

Having reviewed the record and the settlement terms, I FIND:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures and/or the signatures of their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

I CONCLUDE that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and, therefore, ORDER that the parties comply with the settlement terms and that these proceedings be concluded.

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.

November 3, 2014
DATE

Mumtaz Bari-Brown
MUMTAZ BARI-BROWN, / LJ

Date Received at Agency: _____

Date Mailed to Parties:
or _____

Washington Partners L.L.C.

vs

Doclet No. DUC-12746

8006 N

PSETG

DUC-01407-

2013 N

1. A dispute has arisen over a refund check issued by PSETG in the amount of \$170,680.07 to Washington Partners on April 21, 2009 for account no.

~~170,680.07~~ 200 00.

2. The refund check covered the usage period of November, 2006 through May, 2008 ("refund period").

3. Defendant will provide proof of payment by way of canceled checks issued to PSETG from November through May 2008, by December 15, 2014.

4. If Defendant is unable to provide proof of payment for the entire refund period, PSETG agrees to review canceled checks in some out hand.

5. Once PSE&G is able to verify, through receipt of canceled checks, that Debtors paid for utility service during the period covered (or some part thereof) PSE&G will issue the appropriate credit to Debtors and debit the account of Washington Commers. [REDACTED] 00 02, in the commensurate amount.

Joseph R. [Signature]
By: Joe Scardino
Washington Commers, LLC
October 22, 2014

James Walsh
By: James Walsh
PSE&G
October 22, 2014