

failure to state a claim. JCP&L added that Petitioner had an overdue balance on her JCP&L account but that shut off was forestalled due to the instant petition.

NJNG filed a Verified Answer on February 8, 2011, raising affirmative defenses including the Board's lack of jurisdiction. NJNG explained that it had investigated Petitioner's gas account in response to her petition, and upon discovering that she had been improperly charged for services she retained from NJRHS, promptly removed the charges. As a result, Petitioner's account was left with a \$190.46 credit through January 11, 2011. With respect to the allegation of consolidated charges, NJNG denied combining any gas service charges on Petitioner's account with any JCP&L charges. While NJNG indicated that it lacked sufficient information to admit or deny Petitioner's specific allegations regarding her service contract with NJRHS, NJNG did offer that NJRHS completed the installation in November 2009; made requested adjustments to the system to the satisfaction of Petitioner, but could not finalize Township inspection due to the lack of access to Petitioner's home. Answer, at 7.

The petition was transmitted to the Office of Administrative Law (OAL) on March 4, 2011, as a contested case and assigned to ALJ Kerins. On October 3, 2011, JCP&L's motion for summary decision was granted, which resulted in dismissal of the petition against JCP&L. JCP&L was able to show through Petitioner's admissions and interrogatory responses, that there was no consolidation of bills between JCP&L and NJNG and that the remaining dispute did not involve JCP&L. (See JCP&L's Motion for Summary Decision and Dismissal, June 30, 2011).

The remaining dispute against NJNG was sent back to the Board by the OAL after Petitioner failed to appear for a hearing. Upon the subsequent request by Petitioner for a hearing notwithstanding, and the Board's receipt of her explanation for failing to appear, the Board re-transmitted the matter to the OAL on February 1, 2012 for a hearing under docket number PUC 2220-12.

NJNG then filed a June 12, 2012 motion for summary decision on the remaining claims, challenging the court (and the Board's) jurisdiction. Specifically, NJNG argued that the Board does not have the authority to review contracts or to provide money damages as a remedy for breach of contract. NJNG June 12, 2012 motion at 7. NJNG posited that all of Petitioner's remaining claims were economic and/or contractual in nature and did not fall under the Board's jurisdiction. Id. at 8.

ALJ Kerins issued an Initial Decision on September 6, 2012, granting NJNG's motion and dismissing the petition. The court reasoned that the remaining claims asserted by Petitioner related to her dissatisfaction with the installation and performance of furnace equipment by NJRHS and as such, essentially arose of a contract or negligence dispute over which the Board does not have jurisdiction. Initial Decision at 3, 4. No exceptions were filed.

DISCUSSION AND FINDINGS OF LAW

After review and consideration of the entire record, the Board **HEREBY ADOPTS** the Initial Decision of Judge Kerins to dismiss the petition upon different grounds than the court as detailed below.

The remaining dispute is quite narrow. Once JCP&L was dismissed from this action and NJNG confirmed that it had corrected its billing error on Petitioner's account, Petitioner's remaining

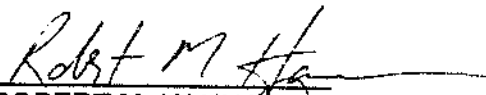
claim was limited to her dispute that NJRHS failed to properly install equipment she purchased under her contract with NJRHS and her desire for NJRHS to make installation repairs. Petition at 2.

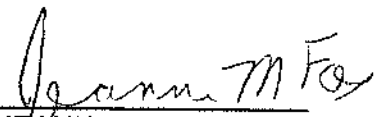
The court properly noted the Board's broad supervisory and regulatory powers over public utilities in New Jersey. ID at 4. Township of Deptford v. Woodbury Terrace Sewerage Corp., 54 N.J. 418, 424 (1969). While there is no question that NJNG is a public utility as defined under N.J.S.A. 48:2-13 (a), over which the Board has general supervision and regulation of and jurisdiction and control, the same is not true as to NJRHS. NJRHS, against whom Petitioner seeks relief, is neither a public utility nor did it provide services to Petitioner necessary for the transmission and distribution of gas or which relate to the reliability of gas supply to retail customers. ¹ N.J.S.A. 48:2-13(d). Therefore, there is no basis under the Board's express authority in N.J.S.A. 48:2-13 or otherwise, for it to entertain Petitioner's remaining claims which are against NJRHS.


For the reasons stated above, the Board **HEREBY ADOPTS** the Initial Decision dismissing the petition. Finding a separate and distinct basis to dismiss the petition as outlined above, the Board finds no reason to address the reasoning of ALJ Kerins.


DATED: 12/19/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

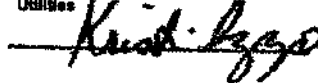

NICHOLAS ASSELTA
COMMISSIONER


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



¹The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof. N.J.S.A. 48:2-13 (a).

DODIE K. HOGAN

V.

NEW JERSEY NATURAL GAS COMPANY

BPU DOCKET NO. GC10110839U
OAL DOCKET NO. PUC2220-12

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NJ BPU
CASE MANAGEMENT

INITIAL DECISION ON MOTION

OAL DKT. NO. PUC 2220-12

(ON REMAND PUC 2765-11)

AGENCY DKT. NO. EC10110829U

AND GC10110839U

DODIE K. HOGAN,

Petitioner,

v.

NEW JERSEY NATURAL GAS

COMPANY,

Respondents.

Dodie K. Hogan, petitioner, pro se

Eileen F. Quinn, Esq., for New Jersey Natural Gas Company, respondent

Record Closed: September 4, 2012

Decided: September 6, 2012

BEFORE **PATRICIA M. KERINS**, ALJ:

Respondent, New Jersey Natural Gas (NJNG) has filed a motion for dismissal dismissed of this action brought by petitioner Dodie Hogan (Hogan). Respondent contends that petitioner is seeking relief based on alleged breach of contract between herself and another subsidiary of its parent company, New Jersey Resource Corporation (NJR). As such, NJNG asserts that the transmitting agency, the Board of Public Utilities (BPU) does not have jurisdiction over the dispute.

PROCEDURAL HISTORY

On November 4, 2010, Hogan filed a petition with the BPU against NJNG and Jersey Central Power & Light (JCP&L). The matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case on March 4, 2011, bearing OAL Docket No. PUC 2763-11. Her petition set forth that her dispute with NJNG arose out of the installation of a new gas heating system in her home. She also disputed the manner in which she was billed by JCP&L, and alleged that problems with the new system caused her to incur higher electric bills from JCP&L. On motion, JCP&L was dismissed as a party to that action on October 3, 2011. In early 2012, Hogan's petition was dismissed based upon her failure to appear at the scheduled hearing at the OAL. The matter was retransmitted to the OAL by the BPU for a hearing on February 21, 2012, as OAL Docket No. PUC 2220-12.

On June 14, 2012, respondent NJNG filed a motion requesting the dismissal of Hogan's petition. On June 21, 2012, a telephone conference was held with the parties. At that time, petitioner acknowledged receipt of the motion and, as set forth in a June 25, 2012 letter, she was given until July 6, 2012, to respond to the motion. Hogan then requested an extension of time to respond to the motion and replied to the motion by letter.

FACTUAL DISCUSSION

Hogan is a customer of NJNG and receives gas at her home in Aberdeen, New Jersey. In 2009 Hogan entered into an agreement to purchase a furnace and other HVAC equipment from NJR Home Services (NJRHS), an affiliated company of NJNG. Hogan agreed to pay a \$1,500 deposit, \$850 upon completion of the installation, and pay the remaining \$1,000 over a period of six months. She paid the deposit and the equipment was installed. A dispute then arose between Hogan and NJNG regarding NJRHS's performance under the installation contract and NJNG's action in placing a charge upon Hogan's gas service account for amounts due under the NJRHS contract.

NJNG admits that due to a billing error, charges related to the installation of the furnace were mistakenly placed upon her gas account, resulting in a disconnection notice in October 2010. After receipt of Hogan's original petition, NJNG reviewed her gas billing and corrected the error, removing all charges for the equipment and issuing a credit balance to petitioner in December, 2010. In its pleadings respondent states:

The remaining balance due for the Equipment installation is not connected to the Gas Account and Petitioner's gas service will not be discontinued for her continued failure to pay for the Equipment.

Once the billing error by NJNG was resolved, the issues remaining between the parties related to Hogan's dissatisfaction with the equipment and installation of the new furnace by NJRHS.¹

LEGAL DISCUSSION

The issue raised by respondent's motion is whether the issues remaining between the parties are within the jurisdiction of the BPU and the OAL. The authority of an administrative agency such as the OAL is either expressly granted or necessarily implied by statute. See New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562-63 (1978). Pursuant to N.J.S.A. 52:14B-1-15, the OAL derives its authority from the transmitting agencies. In this matter, therefore, jurisdiction over a claim flows from the transmitting agency, the BPU. As noted by respondent, if the BPU lacks jurisdiction, the OAL lacks jurisdiction.

The remaining claims asserted by petitioner in this case relate to her dissatisfaction with the installation and performance of the furnace equipment by NJNG's related company. As such, they essentially arise out of a contract or negligence dispute. While the BPU has broad supervisory and regulatory powers over

¹ As represented by counsel, the contract issues between the parties are the subject of an action pending in the Superior Court of the State of the New Jersey.

public utilities in New Jersey, N.J.S.A. 48:2-13, it has held it does not have the authority to review contracts or award damages as a remedy for breach of contracts. Integrated Telephone Service, Inc. v. Bell Atlantic-New Jersey, Inc., PUC 5737 (1999). It also has held that it does not have jurisdiction over tort actions, such as negligence. Brooks v. Public Serv. Elec. & Gas, 1 N.J.A.R. 24, 244-46 (1981). Further, the courts have given deference to such determinations by an administrative agency charged with implementing legislation. Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327 (1984).

As the gas service billing dispute between NJNG and Hogan has been resolved, the remaining claims arise from an alleged breach of contract or negligent installation by NJNG's related company NJRHS. As those claims are outside of the jurisdiction exercised by the BPU, the OAL has no authority to entertain them.

Based on the above, respondent's motion to dismiss is **GRANTED**.

ORDERED

It is therefore **ORDERED** that this matter is **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.

9/6/12
DATE

Patricia M. Kerins
PATRICIA M. KERINS, ALJ

Date Received at Agency:

9-6-12

Date Mailed to Parties:

9/7/12

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