Agenda Date: 1/23/13
Agenda Item: 7C

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	)	ORDER ADOPTING THE INITIAL DECISION, IN PART, AND REJECTING AND REMANDING THE INITIAL DECISION, IN PART
V.	)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Respondent	)	BPU Dkt. No. GC08100906U
	)	OAL Dkt. No. PUC 12746-08

Parties of Record:

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

BY THE BOARD:

By Petition filed with the Board of Public Utilities ("Board") on October 10, 2008, Washington Commons, LLC ("Petitioner") contended that Public Service Electric and Gas Company ("PSE&G" or "Respondent") overcharged Petitioner by over $100,000 for approximately a one-and-a-half year period of time. The Petition was transmitted to the Office of Administrative Law ("OAL") on December 3, 2008, as a contested case and was subsequently assigned to the Honorable Mumtaz Bari-Brown, Administrative Law Judge ("ALJ"). Then, on June 4, 2012, Respondent filed a motion seeking to amend its answer to join Washington Commons Condominium Association (the "Association") as a party to the action. In the alternative, Respondent moved to dismiss the Petition. Petitioner did not file a response to Respondent's motion. In a written decision dated August 3, 2012, ALJ Bari-Brown denied Respondent's motion to join the Association and granted Respondent's motion to dismiss the Petition.

By Orders of Extension dated September 13, October 23, and December 19, 2012, the Board was given until February 7, 2013, to render a final agency decision. Having reviewed the record, the Board now adopts the Initial Decision, in part, and rejects the Initial Decision, in part, and orders that the matter be remanded for a factual hearing before the ALJ.

BACKGROUND AND PROCEDURAL HISTORY[1]

Petitioner is a developer of a building located at 311 Washington Street in Jersey City, New Jersey (the "Property"). The Property contains sixty-eight condominium units for which Respondent continuously provided gas utility services since November 22, 2006.[2]

Respondent installed a new gas meter on the Property on May 5, 2008. Petitioner claimed that following the new meter's installation, its utility charges dropped from approximately $1,000 per day to approximately $900 per month. As a result, Petitioner sought reimbursement for, what it felt, were overcharges during the Property's construction period, approximately one and one-half years after the installation of the original gas and electric meter (the "usage period").[3]

It is alleged that the owners of the condominium units formed the Washington Commons Condominium Association, Inc. ("Association") and assumed control over the utility payments on June 24, 2008.[4]

On October 10, 2008, Petitioner filed a Petition with the Board, requesting a hearing to resolve the disputed charges during the usage period. It claimed that Respondent owed it over $100,000 for the usage period and that its numerous attempts to directly resolve the charges with Respondent were ignored.[5] Respondent filed its Answer on November 26, 2008. It denied Petitioner's allegations and claimed that a meter reading conducted on the Property on or about May 12, 2008, indicated that the meter was registering at 100.59% accuracy. Respondent also argued that it provided Petitioner with appropriate rates for the correct amount of usage during the usage period and that it conformed to its tariff, New Jersey Statutes and the regulations promulgated by the Board. Finally, Respondent urged the Board to dismiss the Petition because it failed to state a claim upon which relief can be granted.[6] The matter was transmitted to the Office of Administrative Law as a contested case on December 3, 2008.

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[1] We simply recite the allegations as they are detailed in the Petition, Answer, Respondent's Motion, the certification of Edward B. Sullivan in support of Respondent's Motion, and the exhibits accompanying the certification, to clarify the issues. We make no findings of fact because we are remanding the matter to the OAL.

[2] Petition at 1; Sullivan Cert. ¶3; Exhibit 1.

[3] Petition at 1; Sullivan Cert. ¶4; Exhibit 1. The usage period was never agreed upon by the parties and there is insufficient evidence in the record defining the usage period.

[4] Respondent alleges that it was subsequently advised that Petitioner had turned over the gas account to the Association on June 24, 2008. For this proposition, Respondent attached a March 7, 2012, fax cover letter from Petitioner to Respondent's counsel and a May 22, 2008, notice issued by Realty Express, LaBarbera Property Management, LLC. The fax cover sheet reads, "As per the conversation had at the meeting held February 29, 2012, I attach the official meeting for the turnover which occurred June 24, 2008." Sullivan Cert. ¶9; Exhibit 4. While the fax cover sheet does contain the word "turnover," there is no specific reference therein to the utility account. In addition, the notice provided is merely a notice of an upcoming meeting to elect members to the Association's Board of Trustees. Sullivan Cert. Exhibit 4. We further note that Respondent offered another ambiguous exhibit – Exhibit 5 – for the proposition that the Association paid the utility bills during the disputed time frame. Sullivan Cert. ¶12. Thus, the record appears inconclusive on if and when the Association assumed responsibility for the Property's utility charges. Nor does the record contain evidence of further communications between Petitioner and Respondent regarding this, or any other, fact.

[5] Petition at 1.

[6] Answer at 1-2.

Although the record does not disclose precisely when Respondent conducted an internal investigation, Respondent re-billed the gas account for meter number 2283052 for the period from December 22, 2006 to May 5, 2008. Respondent issued a refund check on January 26, 2009, in the amount of $178,150.55 to account number 21-950-671-01. 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, un-cashed, to Respondent as "undeliverable." On April 21, 2009, Respondent issued a new check for $170,680.27 to account number 0006723820002. Respondent claimed that the difference between the first and second check was due to a credit applied to an account at the time the second check was issued.[7] The second check, also issued to "Washington Commons," 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.[8]

In an April 24, 2012, letter sent to Respondent,[9] the Association informed Respondent that it preliminarily believed that it had paid the utility charges during the usage period and, as such, was entitled to the refund. However, the Association was still investigating the matter and asked Respondent to provide "detail on the nature of the refund and what period of time it covered."[10] The record does not contain any evidence as to whether Respondent provided the Association with the requested documentation.

Since the transmittal of the matter in 2008 to the OAL, the matter was adjourned several times at the request of the parties. Then, on June 4, 2012, Respondent filed a motion seeking to amend its Answer by joining the Association as a party to this case. In its motion, Respondent argued that joining the Association to this matter was necessary because both Petitioner and the Association claim the refund as their own. Moreover, Respondent 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 these proceedings. As such, and in the interest of both expediency and fairness, it contended that the Association must be joined to the case to resolve whether Petitioner or the Association is owed the refund. In the alternative, Respondent sought to dismiss the Petition in its entirety, arguing that it fulfilled its obligations under its tariff[11] by issuing the refund check and that the remaining issue, who was entitled to the refund, is a dispute between two private parties for which the OAL lacks jurisdiction.

The Petitioner did not file a formal response to Respondent's motion.[12]

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[7] Sullivan Cert. at ¶8. However, the checks were written to two different account numbers. The record is silent as to why there were two account numbers, why the checks were issued to two separate accounts and which account was ultimately credited.
[8] Sullivan Cert. at ¶6-8.
[9] Respondent did not provide a copy of the letter it sent to the Association. Nor has Respondent provided copies of other communications between itself, Petitioner and the Association.
[10] Sullivan Cert. ¶12; Exhibit 5.
[11] Respondent did not attach a copy of the tariff upon which it relies.
[12] It is unclear from the record whether the Association was served a copy of the Motion or whether it was notified of this proceeding.

The ALJ issued an Initial Decision on August 3, 2012, denying Respondent's motion to join the Association as a party to the case and granting Respondent's motion to dismiss the Petition. In dismissing the Petition, the ALJ found that Respondent complied with its tariff by resolving the overcharge and issuing a refund. As such, the only remaining issue was a dispute between two private parties, namely Petitioner and the Association, for which the OAL lacked jurisdiction. The ALJ denied Respondent's motion to join the Association because she found that third party practice is not permitted in administrative proceedings absent a finding that the failure to join a third party would result in unfairness and injustice. The ALJ reasoned that denying Respondent's motion to join the Association would not result in unfairness and injustice because Respondent issued the proper refund and the Petitioner and the Association were free to settle their dispute over the refund check in Superior Court should they choose to do so.

On September 12, 2012, Petitioner sent a letter to the Board Ombudsman voicing its intent to appeal the Initial Decision and requesting that the Ombudsman forward Petitioner the proper procedures for appeal. In the letter, Petitioner claimed that the parties agreed to join the Association as a necessary party to the proceedings. It objected to the ALJ's decision to dismiss the Petition, noting that dismissal was both improper and not requested by Respondent.[13]

Petitioner filed its exceptions on October 22, 2012.[14] It objected to the ALJ's decision to dismiss the Petition, arguing that the decision was unsupported by both law and equity because material issues of fact between Petitioner and Respondent remained in dispute. It also noted that Respondent reimbursed the incorrect party and should be held accountable for doing so and argued that the ALJ has jurisdiction to both adjudicate the issues between the parties and to join the Association. Petitioner further argued the Respondent's refund payment to the Association does not and should not satisfy Respondent's obligation to Petitioner and should not warrant a dismissal of the petition. Furthermore, Petitioner stated that it was the account holder during the time period at issue.[15]

DISCUSSION AND FINDINGS

While we find that the ALJ properly rejected Respondent's motion to join the Association, we do so for slightly different reasons.

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[13] It does not appear that anyone was copied on Petitioner's letter.

[14] We summarize Petitioner's exceptions to complete the record provided to the Board. However, we decline to find whether they were timely filed or in compliance with N.J.A.C. 1:1-18.4.

[15] In its reply to Petitioner's exceptions, Respondent mischaracterizes the motion it made before the ALJ as a "motion for summary disposition," Respondent, however, made a Motion to Amend its Answer and included in that motion a request for dismissal, the standards of which differ from a motion for summary disposition. Moreover, N.J.A.C. 1:1-12.5, the rule upon which Respondent relies, authorizes an ALJ to grant an unopposed motion for summary disposition only "when appropriate." Entry of summary disposition is inappropriate in a case where material facts remain unresolved. Matter of Robros Recycling Corp., 226 N.J. Super. 343 (App. Div.1988), certif. denied, 113 N.J. 638. We make no specific ruling regarding Respondent's argument in light of our remand order.

Title 1 of the New Jersey Administrative Code contains the Uniform Administrative Procedural Rules (UAPR) which apply in the OAL. The UAPR does not include a rule providing for the joinder of third parties. N.J.A.C. 1:1-1.3(a) provides:

> This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are comparable with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings. (emphasis added).

Stated otherwise, an ALJ cannot compel a party to join an existing administrative proceeding unless a separate rule or law authorizes joinder. B.R. v. Woodbridge Bd. of Ed., 95 N.J.A.R.2d (EDS) 159 (1995) (declining to join the Department of Human Services as a third party to an administrative dispute between parents and the Woodbridge Board of Education because N.J.A.C. 1:1-1.3(a) prohibits joinder in the absence of a statute permitting same). The reasoning behind this rule is clear. The ALJ's primary function is to create a record via an evidentiary hearing "both to enable the agency head to make an intelligent and informed decision and to facilitate appellate review of that decision in order to insure that it was supported by substantial credible evidence." L.P. v. Edison Bd. of Educ., 265 N.J. Super. 266, 275-276 (Law Div. 1993) (finding the ALJ properly refused to join the Division of Youth and Family Services and the Department of Human Services because the Individuals with Disabilities Education Act did not authorize the ALJ to join a state sub-agency to a due process hearing); A.N. v. Clark Bd. of Educ., 6 N.J.A.R. 360 (EDS) (1983) (refusing to join the Department of Human Services because no federal or state statute authorizes a right to joinder in a special education case). ALJ's have no independent decisional authority. In re Uniform Rules, 90 N.J. 85, 94 (1982). Accordingly, any attempt to exercise such authority, as noted by the New Jersey Supreme Court, "would constitute a serious encroachment upon an agency's ability to exercise its statutory jurisdiction and discharge its regulatory responsibilities." Id. Here, no statute or rule specifically authorizes joinder in a billing dispute.

We note that the UAPR allows an ALJ to relax a procedural rule if strict adherence to the rule would result in unfairness or injustice. See N.J.A.C. 1:1-1.3(b). However, this relaxation rule allows an ALJ to relax only the rules contained in the UAPR. Because the UAPR contains no procedural rule providing for the joinder of third parties, there is no rule here for an ALJ to relax. Thus, while the ALJ correctly reasoned that it could not join the Association, its analysis regarding the relaxation of N.J.A.C. 1:1-1.3(a) appears unnecessary.

We also note that, although an ALJ may not compel the joinder of a third party, a third party may voluntarily move to intervene in an existing administrative proceeding. N.J.A.C. 1:1-16.4 provides:

> Where it appears to the judge that a full determination of a case may substantially, specifically and directly affect a person or entity who is not a party to the case, the judge, on motion of any party or on his own her own initiative, may order that the Clerk or any party notify the person or entity of the proceeding and of the opportunity to apply for intervention or participation pursuant to these rules.

This rule applies to billing disputes and would permit the Association to intervene or participate in this case.

Because no statute specifically authorizes an ALJ to join a third party to a billing dispute, the Initial Decision denying Respondent's motion to join the Association is **HEREBY ADOPTED**. Should the Association choose not intervene in this proceeding, neither Petitioner nor Respondent should be precluded from pursuing legal action against the Association.[16]

However, we **REJECT** the decision to grant Respondent's motion to dismiss the Petition and **REMAND** the matter for further findings of fact. In a billing dispute, the ALJ's function is to create a record which identifies whether a customer was improperly charged for excess usage, whether the customer suffered any losses as a result of billing problems, and whether any billing adjustments made by the utility were reasonable and appropriate under the circumstances. See Reed v. Atlantic City Electric Company, OAL Dkt. No. PUC 10976-10, *10-11 (2012). The record before us is sparse and there remain numerous unresolved facts dispositive of the billing dispute.

Specifically, we note there is no evidence establishing the specific usage period, whether Petitioner was the customer of record during the usage period, the address of record during the usage period and Respondent's refund liability. Moreover, the record does not disclose why the first refund check issued by Respondent listed one account number while the second check lists another. There is no evidence establishing which account was credited, who the customer of record is for the credited account, and whether crediting that account complied with Respondent's tariff. The ALJ also failed to determine whether Respondent communicated and negotiated with the proper party and in accordance with its tariff.

Because these facts remain unresolved, the factual conclusions reached by the ALJ are necessarily unsupported by credible evidence. There is no evidence supporting the ALJ's conclusion that there "is no dispute over the accuracy of the overbilling" as there is nothing to support Petitioner's consent to the refund amount. The finding that Respondent "resolved the overcharge and credited the proper amount of refund to the customer's account" is not supported by credible evidence because, as noted above, the record does not establish which account was credited, whether Petitioner was the customer of record or whether the Respondent's calculations of the overcharges were correct. Nor did the record identify the proper rate or the reasons for the overcharge. Finally, we are not persuaded the record supports the finding that Respondent complied with its tariff without proof from Respondent.

It appears from the record before us that the Association could be substantially, specifically and directly affected by these proceedings. As a result, the ALJ shall notice the Association of its opportunity to intervene or participate in this case pursuant to N.J.A.C. 1:1-16.4. Irrespective of the Association's decision, the ALJ should determine whether Petitioner is owed a refund. If so,

[16] In support of its request that the Association be joined, Respondent argued that it would be precluded from litigating issues involving the refund under the legal theories of res judicata, collateral estoppel and the entire controversy doctrine. We distinguish City of Hackensack v. Winner, 82 N.J. 1 (1980), the case cited by Respondent in support of its position, and note that, unlike Hackensack, where two administrative agencies were presented with the same issues by the same parties, the administrative proceeding at hand would be limited to the issues raised by Petitioner.

the ALJ must determine Respondent's refund liability and order Respondent to satisfy the overpayment.

Upon careful review and consideration of the record, and based on the foregoing, the Board **HEREBY FINDS** that:

(i) The Initial Decision denying Respondent's motion to join the Association is **ADOPTED**;
(ii) The Initial Decision granting Respondent's motion to dismiss the Petition is **REJECTED**;

The Board **ORDERS** that the matter be **REMANDED** for a hearing to determine, among other things, the following:

a. Who applied for utility service and when?
b. What is the usage period?
c. Was Petitioner the customer of record during the usage period? Were there any changes to the customer of record during and/or after the usage period and, if so, who initiated the change, what were the changes, and when did they occur?
d. What was the address of record during the usage period? Were there any changes to the address of record during or after the usage period and, if so, who initiated the changes, what were the changes, and when?
e. Why was the meter changed and what were the meter test results?
f. Why was the account number changed?
g. Was there an overpayment? If so, what was the reason for the overpayment, what is the amount of the overpayment, and how was it calculated?
h. What prompted Respondent to conduct an investigation, what was the result of the investigation, what actions did Respondent take after the investigation, and whom did Respondent contact following its investigation, and how? Did Respondent contact and negotiate with the appropriate party pursuant to its tariff?
i. Did Respondent comply with its tariff by issuing the refund to the Association?
j. Was the credit issued by Respondent in accordance with its tariff?

The Board further **ORDERS** that the ALJ provide notice to the Association of its opportunity to intervene or participate in this proceeding pursuant to N.J.A.C. 1:1-16.4. Should the Association choose to remain a non-party, the ALJ shall proceed with the case.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision rejecting Respondent's motion to amend its Answer to add the Association, **REJECTS** the Initial Decision to dismiss the Petition, and **REMANDS** for further findings of fact.

DATED: 1/24/13

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

WASHINGTON COMMONS, LLC

v.

PUBLIC SERVICE ELECTRIC AND GAS

BPU DOCKET NO.: GC08100906U
OAL DOCKET NO.: PUC 12746-08

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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 indispensible 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 indispensible 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:

Date Mailed to Parties:
df/sej