



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

FOUR SEASONS AT WAYNE CONDOMINIUM ASSOCIATION, INC., Petitioner)	ORDER ADOPTING INITIAL DECISION SETTLEMENT
)	
V)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Respondent)	BPU Dkt. No. EC10040267 OAL Dkt. No. PUC05614-10

Scott B. Piekarsky, Esq., Piekarsky & Associates, LLC, Wyckoff, New Jersey, on behalf of Petitioner, Four Seasons at Wayne Condominium Association, Inc.

Alexander C. Stern, Esq., Newark, New Jersey, on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD:

On April 14, 2010, Four Seasons at Wayne Condominium Association, Inc. ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a dispute with Public Service Electric and Gas Company ("Respondent") related to the installation and maintenance by Respondent of certain pathway lighting in public areas of the subject residential housing development ("the bollard lighting system").

After the filing of Respondent's answer, 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 ("ALJ") Gail M. Cookson.

While this matter was pending at the OAL, the parties engaged in negotiations and entered into and signed a Stipulation of Settlement ("Stipulation") that was submitted to the ALJ. By Initial Decision issued on February 4, 2011, and submitted to the Board on February 8, 2011, to which the Stipulation was attached and made part thereof, ALJ Cookson found that the Stipulation

was voluntary, that its terms fully disposed of all issues in controversy and that it satisfied the requirements of N.J.A.C. 1:1-19.1.

The procedural history of this matter through the courts and the Board of Public Utilities is set out in detail in the Stipulation and need not be repeated herein. The Board will, however, note the major provisions agreed to by the parties. Pursuant to the terms of the Stipulation, and in order to resolve this matter without the need for future litigation, the parties have agreed:

1. After consultation with Respondent with regard to any compromise of the provision of safe, adequate and proper service and absolution and/or indemnification of Respondent from any and all liability for the safe use of Petitioner's public area walkways due to a reduced level of light, Petitioner will submit a written request detailing the removal of some of the bollard light fixture on the subject property. Said removal will be done at Respondent's expense. Upon receipt of said written request, Respondent will determine the remaining bollards to be billed monthly;
2. In light of the past litigation regarding this matter, Respondent agrees to accept and Petitioner agrees to provide to Respondent, a one-time contribution to the total installed cost of the remaining bollard system in the amount of \$253.96 per remaining bollard. The amount of the total lump sum contribution and future monthly charges for private street and area lighting will depend on Respondent's ultimate decision as to how many bollard lights it chooses to maintain/remove with the understanding that Respondent shall first determine that any requested removal does not compromise the provision of safe, adequate and proper service and that Respondent will be absolved or indemnified from any and all liability for the safe use of Petitioner's public area walkways due to the reduced level of lighting;
3. Upon receipt of the one-time contribution referred to in Paragraph 2 above, that portion of Petitioner's monthly utility bill related to the fixture charge per bollard light will be reduced from \$21.20 per light to \$12.53 per light. This new charge includes a monthly maintenance charge of \$7.28 which could be subject to change in future base rate cases filed with the Board by Respondent; and
4. Petitioner agrees to withdraw its petition with prejudice.

After review of the record and the Stipulation of Settlement of the parties, the Board HEREBY FINDS that the parties have voluntarily agreed to the settlement as evidenced by their signatures and that by the terms of the Stipulation of Settlement have fully resolved all outstanding contested issues in this matter.

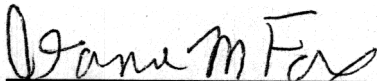
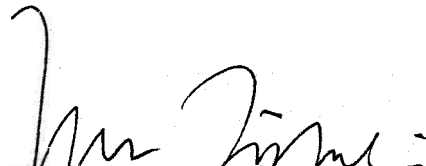
Accordingly, the Board HEREBY ADOPTS the Initial Decision and the Stipulation of Settlement executed by the parties in their entirety as if fully set forth herein.

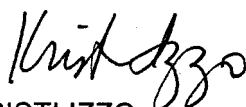
DATED: 3/9/11

BOARD OF PUBLIC UTILITIES
BY:

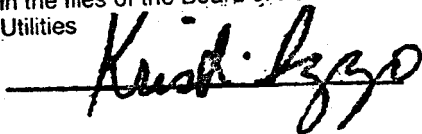


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER
JOSEPH L. FIORDALISO
COMMISSIONER
NICHOLAS ASSELTA
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



FOUR SEASONS AT WAYNE CONDOMINIUM ASSOCIATION, INC.

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

**BPU DOCKET NO. EC10040267
OAL DOCKET NO. PUC05614-10**

SERVICE LIST

Scott B. Piekarsky, Esq.
Piekarsky & Associates, LLC
191 Godwin Avenue – Suite 9
Wyckoff, New Jersey 07481

Alexander C. Stern, Esq.
PSEG Services Corporation
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Newark, New Jersey 07102-4194

Jerome May, Director
Division of Energy
Board of Public Utilities
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Newark, New Jersey 07102

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Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

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CMS
Beslow
DAG
RPA
Lee-Thomas
J. May
Energy



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
MAIL ROOM
11 FEB -8 PM 2:53
BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. PUC 05614-10
AGENCY DKT. NO. EC10040267

**FOUR SEASONS AT WAYNE CONDOMINIUM
ASSOCIATION, INC.,**

Petitioner,

v.

PUBLIC SERVICE ELECTRIC & GAS CO.,

Respondent.

Scott B. Piekarsky, Esq., for petitioner (Piekarsky & Associates, attorneys)

Alexander C. Stern, Assistant General Regulatory Counsel, for respondent (J.A.
"Lon" Bouknight, Jr., General Counsel, attorney)

Record Closed: February 4, 2011

Decided: February 4, 2011

BEFORE GAIL M. COOKSON, ALJ:

On April 9, 2010, Four Seasons at Wayne Condominium Association, Inc. (petitioner) filed a Verified Petition with the Board of Public Utilities (Board) against Public Service Electric and Gas Company (respondent) alleging improper charges for an installed bollard lighting system and seeking an order requiring respondent to replace the system to meet certain code standards and to compensate petitioner. The file was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F-1 to- 13, on June 3, 2010.

A case management conference was convened telephonically on June 29, 2010, and an in-person settlement conference was scheduled at that time for July 29, 2010. That settlement conference was adjourned with consent until September 8, 2010. Constructive progress was made during that mediation session and another meeting was convened on September 20, 2010. At that time, the parties were able to reach verbal agreement on all material terms and conditions of a resolution of the petitioner's complaint.

On February 4, 2011, I received a fully-executed Stipulation of Settlement of all parties to this matter with a request that I enter an Initial Decision Settlement and transmit same to the Board. That agreement more completely sets forth the terms and conditions of the settlement of all issues raised by the filing of the Company.

have reviewed the record and terms of the Stipulation and **FIND:**

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

I **CONCLUDE** that the Stipulation of Settlement meets the requirements of N.J.A.C. 1:1-19.1 and therefore, it is **ORDERED** that the matter be deemed dismissed with prejudice and that these proceedings be and are hereby 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 (45) days and unless such time limit is otherwise extended, this

CAL DKT. NO. PUC 05614-10

recommended decision shall become a final decision in accordance with N.J.S.A.
52:14B-10.

February 4, 2011

DATE



GAIL M. COOKSON, ALJ

Date Received at Agency:

Date Mailed to Parties:

id



Alexander C. Stern
Assistant General Regulatory Counsel

Law Department
80 Park Plaza, T5G, Newark, NJ 07102-4194
tel: 973.430.5754 fax: 973.430.5983
email: alexander.stern@pseg.com



February 1, 2011

Honorable Gail M. Cookson, ALJ
Office of Administrative Law
33 Washington Street
Newark, NJ 07102-3011

2011 FEB -4 A 8:29
STATE OF NEW JERSEY
OFFICE OF ADMIN LAW

~~Re:~~ **Re: Four Seasons at Wayne Condominium Association, Inc v. PSE&G
Costs of Private Street and Lighting Services
BPU Docket No.: EC10040267
OAL Docket No.: PUCOT 05614-2010N**

Dear Judge Cookson:

Enclosed please find a signed Stipulation of Settlement with reference to the above-captioned matter.

Very truly yours,

Alexander C. Stern
Alexander C. Stern

ACS/jb
Enclosure

cc: Scott Piekarsky, Esq.

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

2011 FEB -11 A 8:29
STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

Four Seasons at Wayne Condominium)
Association, Inc.

Petitioner,

v.

Public Service Electric & Gas Company)

Respondent.)

) BPU DOCKET NO. EC10040267
) OAL DOCKET NO. PUC05614-2010
)
)
)
) **STIPULATION OF SETTLEMENT**

WHEREAS, this action involves a residential housing development known as Four Seasons at Wayne located in the Township of Wayne, Passaic County, New Jersey, containing two hundred thirty (230) residential condominiums and one Clubhouse (the "Project");

WHEREAS, this action arose from various disputes between Petitioner and K. Hovnanian at Wayne VIII, LLC ("Hovnanian"), a New Jersey Limited Liability Company and the builder of the Project concerning certain repairs to and conditions of common elements of the Condominium and, more specifically, allegations concerning Hovnanian's failure to adequately disclose the nature of the utility service it procured from Public Service Electric and Gas Company ("PSE&G") for the Project with respect to the installation and maintenance by PSE&G of certain pathway lighting in public areas of the Project (hereinafter "the bollard lighting system");

WHEREAS, on or about October 30, 2006, the Association commenced a lawsuit entitled Four Seasons at Wayne Condominium Association, Inc. v. K. Hovnanian at Wayne VIII, LLC, et als., in the New Jersey Superior Court, Law Division, Passaic County, Docket No. PAS-L-4703-06, which lawsuit related to the bollard lighting system of the Project ("Original Action");

WHEREAS, on or about October 17, 2008, a Consent Order was entered by the Honorable Thomas F. Brogan, dismissing the Original Action without prejudice;

WHEREAS, on or about the same date, October 17, 2008, Petitioner refiled its lawsuit in the New Jersey Superior Court, Law Division, Passaic County, Docket No. PAS-L-4374-08, against both Hovnanian and PSE&G ("Superior Court Action");

WHEREAS, the Superior Court Action was limited to the bollard lights installed by PSE&G at the request of Hovnanian and no allegations were made against PSE&G by Petitioner with respect to PSE&G's extension of utility service to provide electric utility distribution service to the residents of Four Seasons and other private street area lighting service to the development;

WHEREAS, PSE&G extended service to the Project, including provision of the bollard lighting system, in accordance with its Tariff for Electric Service approved by the New Jersey Board of Public Utilities ("Board") and all applicable Board regulations;

WHEREAS, PSE&G's rates, terms and conditions for equipment, maintenance and power consumption of the exterior lighting system, including the bollard lighting system are governed by PSE&G's Board-approved Tariff for Electric Service;

WHEREAS, by Order dated November 14, 2009, PSE&G was severed from the Superior Court Action;

WHEREAS, on or about November 14, 2009, Petitioner and Hovnanian executed an out-of-court settlement dismissing the Superior Court Action upon payment by Hovnanian to Petitioner of One Hundred Thousand (\$100,000) Dollars ("Hovnanian Settlement");

WHEREAS, the Hovnanian Settlement obligated Petitioner to file the within action against PSE&G;

WHEREAS, in or about May 2010, Petitioner filed the within action against PSE&G, PSE&G filed an answer to the petition denying the allegations raised and the Board transmitted the matter to the Office of Administrative Law ("OAL") as a contested case for adjudication;

WHEREAS, the matter was assigned to the Honorable Gail M. Cookson, ALJ for adjudication;

WHEREAS, on September 8, 2010 the parties participated in extensive settlement discussions presided over by ALJ Cookson and agreed in principle to resolve this matter amicably in order to avoid further delay and costs; and

Based upon the foregoing, the parties stipulate as follows:

1. Petitioner agrees not to contest this matter further, and withdraws its hearing request with prejudice.
2. Petitioner has indicated that it will request that PSE&G undertake the removal of some of the bollard light fixtures on its property. PSE&G will consult with Petitioner and will remove fixtures specified by Petitioner at no cost to the Petitioner to the extent that such removal does not compromise the provision of safe, adequate and proper service and absolves and/or indemnifies PSE&G from any and all liability for the safe use of Petitioner's public area walkways due to the reduced level of lighting. Upon receipt of the written request from the Petitioner detailing the specific lights to be removed, PSE&G will determine the number of remaining bollards to be billed monthly.
3. In recognition of the Superior Court Action, the dispute between Petitioner and Hovnanian and the resulting Hovnanian Settlement, in the interests of good customer relations, PSE&G agrees to accept and Petitioner agrees to provide to PSE&G a one-time contribution to the total installed cost of the remaining bollard lighting system in the amount of \$253.96 per remaining bollard. It is agreed by the parties that the lump sum contribution amount paid by Petitioner as well as subsequent monthly charges for private street and area lighting services will abide by Petitioner's ultimate decision on how many bollard lights it chooses to maintain/remove with the understanding that PSE&G shall first determine that any requested removal does not compromise the provision of safe, adequate and proper service and that PSE&G will be absolved and/or indemnified by Petitioner from any and all liability for the safe use of Petitioner's public area walkways due to the reduced level of lighting.
4. Upon receipt by PSE&G of the one-time contribution referenced in Paragraph 3 above, that portion of Petitioner's monthly utility bill related to the Fixture charge (also known as the luminaire charge) per bollard light will be reduced from \$21.20 per bollard light to \$12.53 per

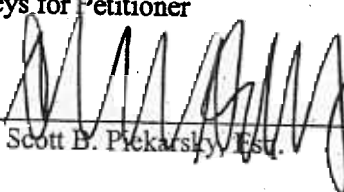
bollard light. This new charge includes a monthly maintenance charge of \$7.28 which will be subject to change in future PSE&G base rate cases. It is PSE&G's current practice not to subject the balance of the monthly Fixture charge to base rate increases; however this practice is subject to possible change in the future as approved and/or directed by the Board of Public Utilities.

4. The undersigned agree that this Stipulation of Settlement contains mutually balancing and interdependent provisions and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Settlement is not accepted and approved by the Board or modified by the Board, the party that is adversely affected by the modification can either accept the modification or declare this Stipulation of Settlement to be null and void, and the parties shall be placed in the same position that they were in immediately prior to its execution.

PIEKARSKY & ASSOCIATES, LLC
Attorneys for Petitioner

DATED:

By:



Scott B. Piekarsky, Esq.

FOUR SEASONS AT WAYNE
CONDOMINIUM ASSOCIATION, INC.

DATED:

By:

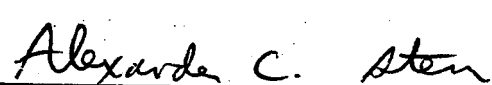


Association President

PSEG SERVICES CORPORATION
Attorneys for PSE&G

DATED: 2 - - 1

By:



Alexander C. Stern, Esq.

Assistant General Regulatory Counsel