



Agenda Date: 9/1/21
Agenda Item: IIC

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

ANGELO SCIOVE

Petitioner

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Respondent

) ORDER OF EXTENSION
)
)
)
)
)

) BPU DOCKET NO. EC20100676

) OAL DOCKET NO. PUC 01436-2021S

(SERVICE LIST ATTACHED)

BY THE BOARD:

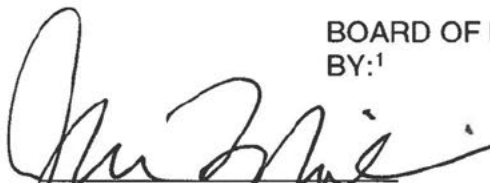
The Initial Decision of the Administrative Law Judge was received by the New Jersey Board of Public Utilities ("Board") on July 21, 2021; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on September 4, 2021. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately 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 **October 19, 2021**.


DATED: 9/1/21

BOARD OF PUBLIC UTILITIES

BY:¹


JOSEPH L. FIORDALISO
PRESIDENT

ATTEST:


AIDA CAMACHO-WELCH
SECRETARY

¹ Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 9-1-2021

cc: Service List Attached

DATED: 9/2/21



ELLEN S. BASS, ACTING DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 9/2/21

Date Board mailed executed Order to Parties: 9/2/21

IN THE MATTER OF ANGELO SCIOVE, PETITIONER

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY, RESPONDENT

BPU DOCKET NO. EC20100676
OAL DOCKET NO. PUC 01436-2021S

SERVICE LIST

Petitioner:

Angelo Sciove
[REDACTED]
New Brunswick, NJ 08901
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

ON MOTION TO DISMISS

OAL DKT. NO. PUC 01436-21

AGENCY DKT. NO. EC20100676

ANGELO SCIOVE,

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC
AND GAS COMPANY,**

Respondent.

Angelo Sciove, petitioner, pro se

Matthew M. Weismann, Esq., for respondent

Record Closed: May 17, 2021

Decided: July 21, 2021

BEFORE **JUDITH LIEBERMAN, ALJ:**

STATEMENT OF THE CASE

Petitioner, Angelo Sciove, appeals the denial of his request for reimbursement or credit and seeks damages from respondent, Public Service Electric and Gas (PSEG) for expenses incurred when contractors retained by respondent caused damage to a sewer line and failed to make appropriate repairs. Respondent moved to dismiss petitioner's

appeal, arguing that neither the Board of Public Utilities (Board or BPU) nor the Office of Administrative Law (OAL) has legal authority to award damages.

PROCEDURAL HISTORY

On or about October 22, 2020, petitioner filed an appeal with the New Jersey Board of Public Utilities (Board). Respondent filed an Answer on or about February 2, 2021. In it, it seeks dismissal of the appeal, based on the absence of legal authority for the award of damages. The Board transmitted the matter to the Office of Administrative Law, where it was filed on February 5, 2021. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A status conference was conducted on May 3, 2021. At that time, it was determined that petitioner would respond to respondent's motion to dismiss by May 17, 2021. Discovery would not commence until after an Order on the motion is issued. Petitioner submitted a packet of materials that constituted the production of discovery. The record closed May 17, 2021.

FACTUAL DISCUSSION

The following is not disputed:

This matter is not a billing dispute. Petitioner has not made any allegation about the accuracy of the bills rendered to him by PSEG. Rather, filed his appeal against respondent and two private entities that he asserted were respondent's contractors, J. Fletcher Creamer and Son, Inc., and Joseph M. Sanzari, Inc. October 8, 2020, Petition at 1. He asserts that his petition contains a "full explanation of events that occurred, damage that was assessed and compensation that [he is] seeking. Ibid.

Petitioner alleged that, while performing work for respondent, the contractors caused damage to a sewer line and failed to make necessary repairs. These acts and omissions caused damage to property owned by petitioner. He claims that he hired contractors to make the necessary repairs and that, in conjunction with the repair work,

he was required to incur multiple costs, including costs associated with relocating tenants who resided at the affected property. Through his appeal, he seeks compensation for costs he incurred:

- Contractor costs and taxes: \$24,866.34
- Blacktop/road repair (asphalt): \$1,650
- Police costs for street closure: \$2,238
- Hotel costs: \$ 477.47
- Roto Rooter costs: \$314.54
- Permits/bonds: \$225

Total compensation sought: \$29,771.35.

[Id. at 2.]

LEGAL ANALYSIS AND CONCLUSION

New Jersey Court Rule 4:6-2(e) authorizes filing of motions to dismiss when a party has failed to state a claim upon which relief can be granted. "A motion to dismiss for failure to state a claim under R. 4:6-2(e) is granted with great caution." Russo v. Nagel, 358 N.J. Super. 254, 262 (App. Div. 2003).

Respondent contends in its motion that the Board and OAL do not have jurisdiction to award the relief sought by petitioner. 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 a matter of law, the Board is not a court of general jurisdiction and lacks jurisdiction to award damages as sought by the petitioner. In In re the Petition of David and Elizabeth Nikel v. Public Service Electric and Gas Co., Dkt. No. EC02040250, 2002

N.J. PUC LEXIS 357 (November 19, 2002) (citations omitted), a case where the petitioners sought monetary damages due to the respondent's tree-trimming activities, the Board stated that "[i]n prior matters, the Board has not exercised jurisdiction as to damages. The Board likewise will not exercise jurisdiction over damages at this time in this matter." See also Muise v. GPU, Inc., 332 N.J. Super. 140, 165 (App. Div. 2000) ("Indeed, the Board lack[s] authority to consider the remedy of damages at all.")

In Integrated Telephone Services v. Bell Atlantic New Jersey, PUC 5737-97, Initial Decision (December 29, 1999) <<http://lawlibrary.rutgers.edu/oal/search.shtml>>, ALJ Mumtaz Bari-Brown summarized the law regarding the Board's power to award damages as follows:

The assertion . . . that the BPU has implied incidental jurisdiction over claims involving money damages is misplaced. The BPU has general supervisory, regulatory and jurisdictional power and control over all public utilities and their assets. N.J.S.A. 48:2-13. This sweeping grant of power includes all incidental powers needed to fulfill the statutory mandate. In re Valley Road Sewerage Co., 154 N.J. 224, 235 (1998). However, there is no express statutory authority permitting the BPU to award money damages. Moreover, the BPU has taken the long-standing position that it lacks the authority to award money damages. Slowinski v. City of Trenton, 92 N.J.A.R.2d (BRC) 71, 73; see also Sheeran v. Progressive Life Ins. Co., 182 N.J. Super. 237, 259 (App. Div. 1981) (citing Swede v. Clifton, 22 N.J. 303, 312 (1956) (when there is reasonable doubt as to whether an administrative agency has a particular power, the power should be denied).

In Howley v. Verizon New Jersey, Inc., PUC 03376-08, Initial Decision (June 24, 2008) <<http://lawlibrary.rutgers.edu/oal/search.shtml>>, a customer filed a petition against Verizon seeking to recover expenses she incurred while trying to move her services from Verizon to another provider, AT&T. At the time she disconnected service from Verizon she had an outstanding balance in the amount of \$457. After informing Verizon she wished to port her service to AT&T, there was a three-week delay before she was able to establish service with AT&T. She asked Verizon to pay her outstanding balance to compensate her for the delay. The judge held, "[a]s for the issue of

monetary damages, Ms. Howley has failed to connect the amount sought in her petition to any outstanding bill that was in dispute." The judge concluded that "based on the fact that this matter clearly goes beyond a mere billing dispute, and that the amount sought is for consequential damages, the OAL does not have jurisdiction to hear this issue."

Here, petitioner represents that the damages he seeks relate to funds he was required to expend to respond to actions taken by respondent and its contractors. He has not alleged that he was improperly billed by respondent or that the content of his bills is incorrect. Because petitioner seeks money damages, I **CONCLUDE** that his complaint must be dismissed as a matter of law. Petitioner may, of course, pursue any other remedies he may be entitled to as a matter of law in the appropriate forum.

ORDER

Respondent's motion for to dismiss is hereby **GRANTED** and the petition is hereby **DISMISSED**.

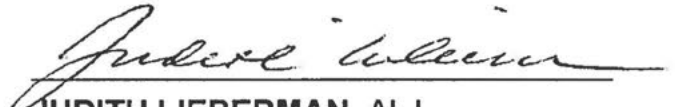
I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

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.

July 21, 2021

DATE


JUDITH LIEBERMAN, ALJ

Date Received at Agency:

July 21, 2021

Date Mailed to Parties:

July 21, 2021

mph

EXHIBITS

For petitioner:

Petitioner's Petition

For respondent:

Respondent's Answer to Petition