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BY E-MAIL AND UPS OVERNIGHT DELIVERY

11/1/2011

Jaclyn A. Brilling, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: OCS Case Numbers 100651 and 100649 -- "Slamming" Complaint of HHLLP Duo One Associates, LLC Against Just Energy

Dear Secretary Brilling:

This is an appeal pursuant to 16 NYCRR Sections 12.13 and 12.05(a)(2) by HHLLP Duo One Associates, LLC, a wholly owned subsidiary of the Hersha Hospitality Trust (jointly hereinafter "Hersha"), of the October 21, 2011 decision annexed hereto. The 10/21/11 decision (a) denied Hersha's "slamming" complaint against Just Energy with respect to supposed "price Protection Agreement" for a Hampton Hotel located at 335 West 39th Street in New York City (hereinafter, "the Hotel"); (b) denied Hersha's request an informal hearing into the merits of its complaint; and (c) implicitly authorized Con Edison to terminate gas and electric service to the Hotel unless Hersha pays about $70,000 in disputed price protection fees.[2]

The facts were detailed and fully documented in Hersha's September 22, 2011 appeal of the informal OCS decision and request for an informal hearing, a copy of which is enclosed, together with Exhibits A through M. These facts are summarized below.

SUMMARY OF UNDERLYING FACTS

A. In November 2009, Hersha Hospitality Trust ("Hersha"), a real estate investment trust (or REIT) which owns over seventy hotels, contracted to purchase the Hotel from Metro Eleven Hotel LLC, a developer and owner of hotels based in Great Neck, N.Y. The Hotel had 184 rooms and the purchase price was $54.3 million. (Ex. C.)

[1] New York State address: 179 East Little Neck Road North, P.O. Box 818, Babylon, N.Y. 11702
[2] A prior decision indicated that the amount being withheld is $98,000.

B. The Hotel Purchase Contract (Ex. D) contained standard language providing that all utility and other "service contracts" in effect for the Hotel at the time the contract was executed would be assigned to Hersha upon closing (Ex. D. p. 7), and prohibited Metro Eleven from entering into additional long-term new service contracts on the Hotel before closing without Hersha's prior written consent. (Ex. D. p. 28, Section 8.7(h).)

C. The November 2009 Purchase Contract was reported by Hersha to the SEC, picked up by the trade press, and would have been disclosed by any due diligence D & B or credit inquiry by Just Energy regarding Metro Eleven and the Hotel. (Ex. C.)

D. At the time the Hotel Purchase Contract was executed, Metro Eleven was apparently purchasing all its gas and electric service, including gas and electric commodity, from Consolidated Edison at its tariffed rates, and these tariff based agreements between Consolidated Edison and Metro Eleven were assigned to Hersha under the Hotel Purchase Contract.

E. On February 2, 2010, a week before the scheduled closing on the sale of the Hotel to Hersha, a commissioned door-to-door independent contractor for an ESCO known Just Energy named Daniel Domenech appears to have induced a custodial employee working at the Hampton Hotel site named Darrell Barr to sign a supposed five-year Natural Gas and Electricity Price Protection Program Customer Agreement (the "Protection Agreement") at prices about 70% above the prevailing Con Edison rate. Ex. A.

F. The supposed Protection Agreement named Metro Eleven LLC as the customer but is defective on its face (and a nullity) because it left the line for the address of the property to be serviced blank. Ex. A.

G. Moreover, by its own terms (Ex. A, para. 20), the Protection Agreement was not assignable by Metro Eleven to Hersha without Just Energy's prior approval.

H. Hersha was not advised about, and did not pre-approve the alleged Protection Agreement.

I. Although the supposed Protection Agreement ostensibly involved a financial commitment in excess of a million dollars by Metro Eleven[3], it is wholly unsupported by any documents issued under Metro Eleven letterhead or by any of the sort of back and forth documentation that invariably would accompany a financial agreement of this magnitude.

J. Mr. Domenech presumably received a very lucrative commission for obtaining Mr. Barr's alleged signature.

K. Mr. Barr had neither apparent authority nor actual authority to bind Metro Eleven to a contract such as the Protection Agreement, and claims that he

[3] Assuming average monthly invoices of $30,000, payments would total about $1.8 million. About one third of this sum, or about $600,000, represents amounts in excess of the Con Edison rate.

did not understand what he was signing. Additionally, no authorized agent of Metro Eleven of sound mind would have bound Metro Eleven to an extremely expensive *five year* price Protection Agreement on the Hotel *a week before the Hotel was to be sold.*

L. In any event, the supposed five year Protection Agreement was not among the Metro Eleven service contracts assigned to Hersha under the terms of the Hotel Purchase Contract, and would, if it had genuinely entered into by Metro Eleven, have been in violation of paragraph 8(7)(h) Hotel Purchase Contract prohibiting new service contracts on the Hotel without Hersha's prior approval. Ex. D., p. 28.

M. Just Energy apparently never sought nor obtained written confirmation of Mr. Barr's authority to enter the Protection Agreement from Metro Eleven and apparently never even contacted anyone at Metro Eleven's headquarters regarding the supposed Protection Agreement.

N. The sale of the Hampton Hotel by Metro Eleven to Hersha closed on February 10, 2010, resulting in the assignment Metro Eleven's agreements for gas and electric commodity service *with Con Edison* to Hersha.

O. Just Energy apparently requested that Con Edison transfer gas and electricity commodity service to Just Energy effective in April or May 2010, and Con Edison began billing Just Energy's inflated price Protection Agreement on Con Edison's gas and electric invoices for the Hotel. By the time of this transfer of account, the Hotel was, of course, already owned by Hersha.

P. The accounts payable staff of Hersha's transition team assumed that the Con Edison gas and electric bills they were receiving on the Hotel's account were consistent with the service agreements assigned by Metro Eleven to Hersha under the Hotel Purchase Agreement, and timely paid these invoices.

Q. It was not until October or November 2010 that Hersha management level personnel critically reviewed these Con Edison bills and discovered (a) that the prices were highly inflated over Con Edison's tariffed rates and (b) that the commodity portions of these bills were being issued, not in the name of Con Edison, but in the name of an ESCO known as Just Energy.

R. After contacting Just Energy and learning for the first time of the alleged Protection Agreement, Hersha insisted in a series of e-mails in November 2010 that it was not bound by the Protection Agreement and demanded that Con Edison be restored as the Hotel's gas and electricity commodity provider. Hersha also demanded a refund of overcharges in excess of $60,000. Ex. E.

S. Just Energy responded by threatening Hersha with a $240,000 early termination charge and by offering Hersha a slightly less expensive long-term agreement. Ex. E.

T. On November 18, 2010 and December 1, 2010, Hersha informed Just Energy by e-mail and FedEx that it (i) was advising Con Edison that "that Just Energy is not and never has been the lawful supplier of electricity and natural gas for the property in question" and (ii) was initiating "steps to make Con Edison the commodity supplier for this property." Ex. E.

U. Just Energy responded on December 2, 2010 by offering to waive the termination fees on the condition Hersha agree to a mutual release and waived its refund claim for overcharges. Ex. E.

V. Hersha declined to sign the mutual release. It also withheld payment from Just Energy on pending and subsequently issued invoices.

W. In total, Hersha has withheld approximately $70,000 in charges invoiced by Just Energy, which roughly equals the amount of overpayments by Hersha on the Just Energy invoices paid.

OCS's HANDLING OF HERSHA'S SLAMMING COMPLAINT

OCS's handling of Hersha's slamming complaint and the consequences of that handling may be summarized as follows:

A. Hersha filed its slamming complaint with OCS on or about January 4, 2011, with copies to Just Energy and Con Edison. Ex. F.

B. Although OCS was required to notify Con Edison[4] of the pendency of the complaint to prevent gas and electric termination over the withheld invoice payments during the pendency of Hersha's slamming complaint, OCS erroneously neglected to do so, and Con Edison notified the Hotel in late January 2011 that it was about to terminate gas and electric service to the Hotel. After a series panic stricken telephone calls and e-mails, OCS belatedly notified Con Edison of the pending proceeding, and Con Edison withdrew the termination threat. Ex. G.

C. In April 2011, OCS erroneously informed Con Edison that Hersha's slamming complaint had been dismissed, leading to new threats by Con Edison of another impending termination of gas and electricity to the Hotel. Hours of panic stricken telephone calls and e-mails ensued until OCS finally notified Con Edison of this additional error, and Con Edison again withdrew the termination complaint. Ex. H.

D. On May 6, 2011, OCS issued two decisions (Ex. I),

    i. the first (case no. 100651) holding that "Metro Eleven Hotels, LLC was properly enrolled based on the alleged authorization given by Mr. Darrell Barr on February 2, 2010:

[4] Hersha in fact served both Con Edison's legal and customer service departments with a copy of the complaint.

ii. the second (case no. 100649) holding Hersha was responsible to pay $98,000[5] to Con Edison "which will become collectible in fifteen days from the date of this latter."

These decisions totally ignored the threshold questions (a) of whether Mr. Barr had actual or apparent authority to bind Metro Eleven Hotels to the five year Protection Agreement on the Hotel; and (b) whether the Protection Agreement (with its hefty fees far in excess of Con Edison's rates) was, in any event, binding upon Hersha.

E. Following an e-mail by Hersha to the PSC's legal department (Ex. J), on May 13, 2011 OCS then retracted these decisions and issued a ruling in Hersha's favor ordering Just Energy to rerate the charges to Con Edison's rates. (Ex. K.)

F. On September 8, 2011 (Ex. L), OCS reversed itself yet again, issuing a third informal decision, this time in Just Energy's favor. Again, OCS simply disregards the threshold questions (a) whether Mr. Barr had actual or apparent authority to bind Metro Eleven to a five year Protection Agreement at rates 70% above Con Edison's on the Hotel a week before the Hotel's sale to Hersha; and (b) whether the Protection Agreement was binding upon Hersha.

G. Instead, OCS attempts to "blame the victim" by faulting Hersha for the belated timing of its discovery of Just Energy's "slamming" and erroneously accuses Hersha of not raising the "slamming allegation" until it "attempted to negotiate a new lower price with the…ESCO." In fact, the consistent theme of all of Hersha's communications to Just Energy (Ex. E) was that the Protection Agreement was unauthorized and that Hersha wanted to revert back to Con Edison as its supplier of gas and electricity. (Ex. E.)

H. On September 22, 2011, Hersha appealed the informal decision and requested an informal hearing. The appeal consisted of 16 single pages of text together with 13 exhibits substantiating Hersha's position that Barr lacked actual or apparent authority to bind either Hersha or Metro Eleven to the Protection Agreement. The appeal also requested that Just Energy produce a host of documents pertaining to the Protection Agreement, including "copies of any tape recordings of statements by Mr. Barr that he had authority to enter into the Protection Agreement."

I. On October 21, 2011, OCS issued the ruling attached hereto denying both Hersha's slamming complaint and Hersha's request for an informal hearing. The decision again holds that the February 2, 2010 Protection Agreement signed by Mr. Barr was binding upon Metro Eleven (and, by implication, upon Hersha) but disregards the threshold question of whether

[5] We do not know the origin of that number.

Mr. Barr, a custodial employee, had actual or apparent authority to bind Metro Eleven to a five year price protection contract.

J. The decision concludes that Mr. Barr had authority to bind Metro Eleven to the agreement based entirely upon an apparent tape recording of Mr. Barr procured by Just Energy where Mr. Barr supposedly claims to have this authority. A copy of this recording has never been provided to Hersha.

K. The decision disregards the fundamental principle of agency law that an agent can only be clothed with apparent authority to bind a principal based on acts and representations of the principal, and never based on acts and representations of the agent. [6]

L. The decision also wholly disregards the implications of the arm's length sale between Metro Eleven and Hersha a week after the Protection Agreement's execution.

M. Although OCS acknowledged that it had jurisdiction to rule on Hersha's slamming complaint, it claimed to lack jurisdiction to determine the scope of Mr. Barr's authority under applicable law.

> "In regard to your client's contention that his [sic] employee was not empowered to execute a contract, please be advised that the PSC does not have authority over contractual issues especially those related to employee/employer matters."

N. In essence, as OCS has it, in determining whether an ESCO contract is executed without proper authorization, OCS can (a) ignore the New York law of actual and apparent authority, (b) disregard facts showing that a low-level employee who has signed an ESCO agreement had no actual or apparent authority to do so; and (c) disregard facts indicating that the ESCO knew of, or willfully blinded itself to, this lack of authority.

O. OCS is wrong, and its decision should be reversed, and the decision of May 13, 2011 ordering Just Energy to re-rate the charges should be reinstated.

P. Additionally, the PSC should bar Con Edison from taking any action to enforce any claims arising under the Protection Agreement until the merits of all of Hersha's defenses to the Protection Agreement are fully adjudicated.

[6] If the agent could define the scope of his or her apparent authority, then any low level employee could bind his or her employee to unauthorized multi-billion contracts simply by assuring the third party that he or she has authority to sign the contract at issue.

DISCUSSION

A. The PSC's Jurisdiction Over Slamming Complaints Against ESCO's Includes Jurisdiction Regarding Questions of Actual and Apparent Authority

"Slamming" is the transfer of utility service accounts by ESCOs and other service providers without proper authorization. The PSC's jurisdiction over slamming complaints against ESCOs necessarily includes within it jurisdiction to make all factual findings needed to determine the merits of the slamming complaint. Whether the five year Protection Agreement at issue here was properly authorized can only be answered by determining whether Mr. Barr, the alleged signatory[7], was lawfully authorized to bind Hersha, or (in the least) Metro Eleven, to a long term price protection agreement of this sort.[8] This analysis must be done under the common law principles of apparent and actual authority that are laid out at pages 10 – 13 of Hersha's 9/22/11 Appeal. This inquiry can only lead to the conclusion that Mr. Barr **lacked both apparent and actual authority.**

OCS has assumed and exercised jurisdiction into the question of "proper authorization," but has erroneously limited its inquiry into the question of "proper authorization" to two facts: (a) whether Mr. Barr was *an employee* of *Metro Eleven*[9]; and (b) whether Mr. Barr, himself, allegedly made a recorded statement that he had authority to enter into the Protection Agreement on Metro Eleven's behalf.[10] As

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[7] If permitted to testify, Mr. Barr will state that he was misled into signing the Protection Agreement, and did not understand what it was.

[8] The necessity of this analysis into questions of actual and apparent authority is clear from the FCC's regulations about unauthorized changes in telecommunications service providers, at Part 64 of Title 47. The regulations (47 CFR 64.1100) define "subscriber," *i.e.* the person permitted to authorize the change in provider, as follows:

> (h) The term subscriber is any one of the following:
>
> (1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill;
>
> **(2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or**
>
> **(3) Any person contractually or otherwise lawfully authorized to represent such party.** (Emphasis supplied.)

In other words, other than when dealing with an individual acting on his or her own account, "slamming" cases always require threshold inquiry into whether the person ostensibly changing the provider on behalf of the account holder was, in fact, authorized to do so. This inquiry is governed by the principles of actual and apparent authority.

[9] In its various decisions, OCS avoids all reference to Hersha, to the Hotel Purchase Agreement, or the transfer of ownership on February 10th, one week after the Protection Agreement was signed.

[10] This recorded statement has never been provided to Hersha and the facts and circumstances underlying it never been explored.

OCS, would have it, then, an agent without *actual authority* to so act can unilaterally clothe himself with *apparent authority* to bind his principal to a one-sided contract with a third party simply by falsely stating that he has the necessary authority. This, however, is contrary to the applicable law.

> Apparent authority will only be found *where words or conduct of the principal--not the agent--are communicated to a third party*, which give rise to a reasonable belief and appearance that the agent possesses authority to enter into the specific transaction at issue *** An *"agent cannot by his own acts imbue himself with the apparent authority"* to act for a principal. *Edinburg Volunteer Fire Co., Inc. v. Danko Emergency Equip. Co.*, 55 A.D.3rd 1108 (3d Dep't 2008.) (Emphasis supplied.)

Having erroneously found that Mr. Barr could unilaterally clothe himself with apparent authority to bind Metro Eleven (but not Hersha[11]), OCS then disclaims "jurisdiction" to consider the indisputable facts showing that Mr. Barr, in fact, obviously lacked both actual and apparent authority to enter into the Protection Agreement on Metro Eleven's behalf. OCS also avoids any inquiry into, and fails to come up with any theory, why Hersha should be liable for any excess payments under the Protection Agreement even though this plan was not assignable to Hersha.

Because OCS has jurisdiction to consider Just Energy's legally inadequate evidence in supposed support of "proper authorization," OCS obviously also has, and must exercise, jurisdiction to consider Hersha's incontrovertible evidence showing that Mr. Barr had no authority to bind Metro Eleven (let alone Hersha) to the oppressive Protection Agreement. *In sum, OCS cannot assert jurisdiction to hear one side of the story, but then disclaim jurisdiction to avoid hearing the other side story.*

B. The PSC Can and Must Bar Con Edison From Terminating Hersha's Gas and Electricity for Non-Payment on the Disputed Protection Agreement Until Hersha's Defenses to the Protection Agreement are Fully Adjudicated

The dispute here involves not two, but three parties: Hersha, Just Energy, and Con Edison. In this proceeding under Chapter 12 of Part 16, Hersha is not only disputing its liability under the Protection Agreement against *to Just Energy*; but is also disputing Con Edison's lawful right and power to terminate gas and electricity service at the Hotel in order to coerce payment of the moneys claimed by Just Energy under the Protection Agreement.

If the dispute were exclusively between Hersha and Just Energy, then Just Energy's sole recourse to collect money claimed under the Protection Agreement

[11] OCS simply disregards the fact that Hersha and Metro Eleven were unrelated entities, and makes no legal argument why the Protection Agreement was ever binding upon Hersha.

would be to prove the merits of its claims against Hersha in a court of law. If the dispute were exclusively between Hersha and Con Edison, then Hersha would be able to defend against Con Edison's money claim on every conceivable legal basis before OCS under Chapter 12 of Part 16, and Con Edison would be barred from terminating service until Hersha's defenses against the claim were fully adjudicated.

OCS is, however, creating a "Catch-22" rule that violates every notion of fair play and due process because the dispute is a three-party dispute involving a customer, an ESCO, and a gas and electric utility. The customer (Hersha) is barred from disputing the ESCO's (Just Energy's) money claim under the Protection Agreement administratively through the consumer complaint procedures set forth in Chapter 12, but the utility (Con Edison) can terminate gas and electric service to the customer unless the disputed and wholly unproven claim by the ESCO is paid in full.

This Catch-22 rule permitting coerced enforcement by gas and electric utilities of unproven and disputed ESCO money claims is contrary to public policy and the letter of Part 12 of Title 16. This denial of due process is particularly inappropriate here because the dispute arises from precisely the sorts of abusive door-to-door sales tactics that specifically gave rise to the recently enacted "Energy service company consumers bill of rights." N.Y. Gen. Bus. Law § 349-d. In sum, through this Catch-22 rule, the PSC is facilitating precisely the sort of abusive door-to-door tactics the Legislature is attempting to eradicate.

The PSC should bar Con Edison from terminating service or otherwise attempting to collect on Just Energy's claims under the Protection Agreement until Just Energy has proven the validity of the Protection Agreement against Hersha, all Hersha's defenses to the Protection Agreement have been fully adjudicated, and all rights to appeal exhausted. In sum, if the PSC is going to disclaim jurisdiction to rule on the merits of Just Energy's claims against Hersha under the Protection Agreement, the PSC must stay all collection actions by Con Edison until Just Energy's claims are proven meritorious by a court of law.

CONCLUSION

For the reasons stated above, the Commission should determine that the Protection Agreement was unauthorized and order Just Energy to re-rate all charges based on the applicable Con Edison rate. Alternatively, the PSCA should order that OCS grant and informal hearing to determine the following:

(a) the facts and circumstances surrounding the signing of the Protection Agreement, including the amount and nature of any commission payments made regarding the Agreement;

(b) whether Mr. Barr, the alleged signatory of the Protection Agreement, had actual and/or apparent authority to bind Metro Eleven to the Protection

Agreement, and, if so, the specific factual basis of this authority;

(c) whether the Protection Agreement was binding upon Hersha (a/k/a HHLLP Duo One Associates, LLC), and, if so, the factual and legal basis for this; and

(d) whether Just Energy engaged in deceptive practices in procuring the Protection Agreement.

Finally, the Commission should order that Con Edison not terminate gas and electric service at the Hotel or otherwise attempt to enforce Just Energy's claims under the Protection Agreement until (a) Just Energy has proven the validity of the Protection Agreement against Hersha; and (b) all Hersha's defenses to the Protection Agreement have been fully adjudicated, and all Hersha's rights to appeal exhausted.

Respectfully submitted

_____
DAVID M. WISE, ESQ.
Attorney for HHLLP Duo One Associates, LLC, and Hersha Hospitality Trust

Cc: Sara Schoenwetter, Esq. (w/o enclosures)
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October 21, 2011

David Wise Attorney At Law
Mr. David M. Wise
11 Commerce Drive
Cranford, NJ 07016

Subject: Case 100651

Metro Eleven Hotels
337 West 39th Street
New York, NY 10018

Just Energy New York Corp. (Just Energy)

Dear Mr. Wise:

This letter is in reply to your request for an informal hearing regarding your allegation that Just Energy acquired your client's electric account without authorization. Pursuant to this allegation, your client is requesting to have his electric account rerated by Just Energy. Unfortunately, I am denying your request as the Public Service Commission (PSC) does not have authority to, nor does an Informal Hearing Officer have power to, grant the relief you are requesting; specifically, to have Just Energy rerate your client's electric account pursuant to Section 5 K 1 of the Uniform Business Practices (UBP).

The issues for consideration before the PSC are whether or not your client's electric account was switched, "slammed," without proper authorization; and, if not, is Just Energy required to rerate your client's electric account. The only issue that the PSC has authority over is with respect to a nonresidential customer being switched without proper authorization. Just Energy, as a competitive energy service company (ESCO), is not subject to PSC jurisdiction

under Public Service Law (PSL) Article 4; and, because Metro Eleven Hotels is a nonresidential customer, it is not entitled to the protections afforded by PSL Article 2. Therefore, all other issues must be addressed through another complaint resolution process (i.e. arbitration) as prescribe by the commercial energy sales agreement (contract) between your client and Just Energy.

In an effort to make sure all of your client's "slamming" concerns were probably addressed, Office of Consumer Services (OCS) staff requested specific documentation from Just Energy: the signed contract, a voice verification tape, and documentation supporting the waiver of an exit fee. A review of the aforementioned information concludes: the contract to switch energy providers was signed by a representative (employee) of Metro Eleven Hotels, the request by Metro Eleven Hotels to switch energy service providers was verified by a taped telephone conversation, and the "exit" fee associated with Metro Eleven Hotels switching its electric service was waived.

Since the switching of energy service providers by Metro Eleven Hotels was authorized by an employee of the company and Just Energy agreed to waive the exit fee so your client can switch back without a penalty, there is no other relief we can offer your client. In regard to your client's contention that his employee was not empowered to execute a contract, please be advised that the PSC does not have authority over contractual issues especially those related to employee/employer relationship matters. In other words, the PSC has not asserted jurisdiction over nonresidential complaints against ESCOs so it cannot compel them to participate in an informal hearing. This limitation was corroborated by an Appeals determination, Case 08-G-0872, the PSC stated: "Thus the complaint procedures provided by PSL and 16NYCRR do not apply to nonresidential customers' complaints against ESCOs[1]." Furthermore, it concluded: "An ESCO contract cannot confer jurisdiction upon the Commission [PSC] that it does not have."

While it is unfortunate that the contract your client entered into with Just Energy was drafted on an older style stationary that offered dispute resolution through the PSC[2], it does not supersede the fact that the PSC does not have authority to direct Just Energy to rerate your client's electric account when "slamming" was not confirmed. Furthermore, the modifications made to the *Home Energy Fair Practices Act* (HEFPA) under the *Energy Consumer Protection Act of 2002* (ECPA)[3] did not include provisions for nonresidential customers doing business with ESCOs. HEFPA, along with the provisions under ECPA, deals exclusively with residential customers. Therefore, it appears that the proper forum for your client's concern is arbitration.

The decision by Just Energy not to rerate, as your client requested, was based on the fact that your client's electric account was not switch without proper authorization. For your information, a request for an informal hearing may be denied if an Informal Hearing Officer would be unable to provide the remedy requested in the complaint - (16 NYCRR §12.5(a)(2)); and/or, the PSC does not have the authority over a party to compel them to participate in an informal hearing – (Case 08-G-0872). Therefore, I am denying your request for an informal hearing because we would be unable to direct Just Energy to rerate your client's account.

If you believe my decision to deny your client an informal hearing was in error, you may appeal it by following the enclosed appeal procedure.

Very Truly Yours,

John B. Auricchio, Manager
Informal Hearing Unit
Office of Consumer Services

cc: Richard Hill – Corporate & Consumer Relations Specialists
Just Energy
5251 Westheimer Road
Houston, TX 77056

Enclosed: Appeal Procedures

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[1] Case 08-G-0872 – In the Matter of the Rules and regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Port Washington Water District of the Informal Decision rendered in Favor of Econnergy Energy Company, filed C 26358 (726870).

[2] The Public Service Commission has long been removed (circa 2008) as a dispute resolution venue for non-residential customers on Energy Service Company (ESCO) commercial energy sales agreements (contracts).

[3] Under ECPA, all of the protections defined by HEFPA are made applicable to the transactions between the competitive suppliers and **residential** consumers.

APPEAL PROCEDURE

If you believe that this decision is incorrect, you may appeal to the Commission. The basis for an appeal to the Commission is limited to one or more of the following grounds:

(1) The hearing officer made a mistake in the facts in the case or in the laws or regulations which affected his or her decision; or

(2) The hearing officer did not consider evidence presented at the hearing or review, which resulted in an unfavorable decision; or

(3) New facts or evidence, not available at the time of the hearing, have become available, and could affect the decision on the complaint.

If you choose to appeal, your appeal must be in writing and must contain an explanation of the facts or conclusions in the decision with which you disagree, the reasons for your disagreement, the relief or remedy sought from the Commission, and documentation of your position or legal arguments supporting your position.

The appeal should be filed within fifteen (15) days after the informal hearing or review decision is mailed, and may be filed electronically or by regular mail. To file electronically, e-mail your appeal to the Secretary of the Public Service Commission, Jaclyn A. Brilling, at:

Secretary@dps.state.ny.us

If you are using regular mail, send your appeal letter to:

Jaclyn A. Brilling, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223