



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

ENERGY

IN THE MATTER OF THE AMENDED AND RESTATED)	DECISION AND ORDER
POWER PURCHASE AGREEMENT BETWEEN PUBLIC)	ACCEPTING A CONSENT
SERVICE ELECTRIC AND GAS COMPANY (PSE&G))	FEE AGREEMENT AND
AND CEDAR BRAKES I, L.C.C. DATED MARCH 21, 2000)	INTERPRETATION LETTER
(NEWARK BAY PPA); THE AMENDED AND RESTATED)	DEALING WITH THE VALUE
POWER PURCHASE AGREEMENT BETWEEN PSE&G)	OF CAPACITY DELIVERED BY
AND CEDAR BRAKES IV, L.L.C. DATED MAY 23, 2001)	SELLERS ¹ TO PSE&G AND
(BAYONNE CAMDEN PPA) AND THE AMENDED AND)	LEVEL OF DISTRIBUTION
RESTATED POWER PURCHASE AGREEMENT)	SURCHARGES
BETWEEN PSE&G AND CEDAR BRAKES III, L.L.C.)	
DATED AUGUST 14, 2001 (EAGLE POINT PPA))	DOCKET NOS.: EE00040245,
)	EM01050327, EM01080489 &
)	EO07120987

(SERVICE LIST ATTACHED)

BY THE BOARD²:

On August 31, 2007, Public Service Electric and Gas ("PSE&G" or "the Company") and the Sellers: Cedar Brakes I, L.L.C. ("CB1"); Cedar Brakes II, L.L.C. ("CB2," f/k/a Cedar Brakes IV, L.L.C.); Utility Contract Funding, L.L.C. ("UCF," f/k/a Cedar Brakes, III L.L.C. or "CB3"); all wholly-owned indirect subsidiaries of The Bear Stearns Companies Inc. ("Bear Stearns"), Constellation Energy³ Commodities Group, Inc. ("Constellation"); Morgan Stanley Capital Group, Inc. ("MSCG"); and El Paso Marketing, L.P. ("EPM," f/k/a El Paso Merchant Energy L.P.) (collectively referred to herein as "the Petitioners"), filed a petition with the New Jersey Board of

¹ The sellers are Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Utility Contract Funding, L.L.C., all wholly-owned indirect subsidiaries of The Bear Stearns Companies, Inc., Constellation Energy Commodities Group, Inc., Morgan Stanley Capital Group, Inc., and El Paso Marketing, L.P.

² Commissioner Christine V. Bator recused herself on this matter pending the resolution of questions related to a potential conflict of interest.

³ Bear Stearns, Constellation, MSCG, and EPM are FERC-authorized power marketer that sells wholesale power at market-based rates organized under the law of Delaware.

Public Utilities ("Board") requesting the Board to issue an Order of Acceptance and Confirmation with respect to a Consent Fee Agreement and accompanying Interpretation Letter dated August 29, 2007 resolving a disagreement between PSE&G and the Sellers concerning the implementation of certain provisions of the Amended and Restated Newark Bay, Bayonne-Camden and Eagle Point Power Purchase Agreements ("PPAs") previously approved by the Board by Orders dated July 7, 2000 (BPU Docket No. EE00040245), July 24, 2001 (BPU Docket No. EM 01050327), and November 8, 2001 (BPU Docket No. EM01080489), respectively.

BACKGROUND

Pursuant to the Public Utility Regulatory Policies Act of 1978 (16 U.S.C 796 *et seq.* ("PURPA")) as implemented by the Federal Energy Regulatory Commission ("FERC") and the Board, PSE&G entered into Power Purchase Agreements to purchase all net electrical power output produced by the Newark Bay, Bayonne, Camden and Eagle Point generating facilities, net of energy and capacity consumed by the facilities' in-plant load and in the case of Eagle Point net of the on-site electrical requirements of the Coastal Eagle Point Oil Company's ("CEPOC") refinery, at pre-established prices based upon then-projected avoided costs. Thus, these facilities provided energy and capacity on a must-run basis. Subsequent to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 *et seq.*, ("EDECA") and the restructuring of the State's electric utility industry and the issuance of FERC Order 888 which paved the way for a fully competitive bulk power market in the PJM interconnection, L.L.C. ("PJM") region as well as the nation, these pre-established prices turned out to be well above the market prices for power, resulting in stranded costs for the Company that are recovered from its customers through their Non-Utility Generation Deferral Charges.⁴

During the 2000-2001 timeframe, and in accordance with EDECA and Board policy, PSE&G sought to mitigate its associated stranded costs and restructured the above referenced PPAs.⁵ The capacities and expiration dates for the restructured and restated PPAs are as follows: Newark Bay PPA, 123 MW to expire in August 2013; Bayonne-Camden PPA, 189 MW through October 2008, then 149 MW to expire March 2013; and Eagle Point PPA, 195 MW to expire August 2016. Under the Amended and Restated PPAs, PSE&G received price reductions in the form of up-front lump-sum payments totaling approximately \$164 million in the aggregate, as well as a fixed rate with regard to the Newark Bay PPA that represented a reduction of 7.5%, which was then estimated to yield \$41.8 million in cost reduction savings for the Company's ratepayers. Also, as a result of the restructurings, the energy pricing terms in the PPAs were converted from a natural gas-indexed basis to a fixed price basis, thereby eliminating natural gas price risk and volatility. In return, the Sellers received the flexibility to operate the power facilities as competitive merchant facilities and to supply the contracted amounts of power either from these specific subject power plants or any other available sources.

Prior to the restructuring of the PPA for the 195 MW Eagle Point generating plant, the plant was dispatched as a base load plant (must run mode of operation) and served the 16 MW load of the Coastal Eagle Point Oil Company's ("CEPOC") refinery round the clock. After restructuring the

⁴ I/M/O the Petition of Public Service Electric and Gas Company's Deferral Filing Including Proposals for Changes in its Rates for its Non-Utility Transition Charge ("NTC") and its Societal Benefits Charge for the Post-Transition Period Pursuant to N.J.S.A. 48:2-21 & 48:2-21.1 BPU Docket No. ER02080604, Summary Order July 31, 2003.

⁵ I/M/O Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings., BPU Docket Nos. EO97070461, EO97070462, and EO97070463, Final Decision and Order August 24, 1999.

PPA,⁶ the refinery returned to PSE&G as a full requirements retail distribution High Tension Service (“HTS”) customer yielding \$2.3 million (net-of-sales-tax) annually in wires charges to the Company. Wires Charges include Securitization Transition Charges (“STC”), Market Transition Charge Tax, Societal Benefits Charges (“SBC”), and the Non-Utility Generation Charge (“NGC”) to the Company. However, when the refinery is served by the Eagle Point generator, the Amended PPA requires that payment to PSE&G for any foregone wires charges be made via a distribution surcharge, to preserve the wires charge contribution that CEPOC was providing as a distribution customer.

By 2005 the wires charge generated approximately \$3.5 million as the refinery load grew to 30 MW. In 2006, the refinery load was served by Eagle Point 20% of the hours in the year. Accordingly, the related foregone wires charge of approximately \$0.66 million was reimbursed to PSE&G via a distribution surcharge. In total, the Company collected \$4.1 million in wires charges taking into account the \$3.44 million recovered in the 80% of hours of the year that the refinery remained a full requirements customer of the utility. Petitioners note that this amount is approximately double the wires charges of \$2.3 million contemplated at the restructuring of the Eagle Point PPA.

Prior to June 2007 and pursuant to the Sellers’ obligations to deliver capacity under the Amended and Restated PPAs, capacity credits were delivered to PSE&G universally throughout the PJM territory and had no locational value. Thus, the sellers credited PSE&G with contractual amounts of capacity which it sold in the PJM capacity markets. From June 1, 2006 through May 31, 2007, the price received for capacity resold by the Company averaged \$6/MW-day or approximately \$1.1 million per year for all generating plants in the PPAs. These receipts were credited to the NGC deferred balance.

However, commencing in June 2007, capacity became locationally priced through the Reliability Pricing Model (“RPM”) auction process, raising the value of capacity throughout PJM and especially in the Eastern Mid-Atlantic Area Council (“MAAC”) area of PJM. A dispute arose between PSE&G and the Sellers as to the interpretation of the Amended and Restated PPAs specifically as to where capacity should be delivered to PSE&G since the price of capacity is influenced by the location of the point of delivery in PJM under the RPM pricing scheme. The first three Planning Periods’ RPM auction prices for the 2007/2008, 2008/2009 and 2009/2010 Planning Periods (PP) are \$41/MW-day, \$112/MW-day and \$97/MW-day, respectively. In light of the considerably higher capacity prices reflected in these recent RPM auctions prices, the Petitioners argued that given the apparent high price volatility reflected in the capacity markets, the recent auction prices cannot be relied upon to forecast future capacity prices. Ultimately the issue involved the correct pricing for capacity credited to PSE&G at either the average of PJM capacity prices or the prices in the Eastern MAAC region that serves PSE&G.

⁶ I/M/O of the Application of Eagle Point Cogeneration Partnership and PSE&G for the Approval of an Amendment and Restatement of the Power Purchase and Interconnection Agreement and Gas Service Agreement Currently Existing Between Eagle Point and PSE&G. BPU Docket No. EM01080489, November 8, 2001; I/M/O of the Application of Camden Cogen, L.P. and Cogen Technologies NJ Venture and PSE&G for the Approval of an Amendment and Restatement of the Power Purchase and Interconnection Agreements and Gas Service Agreement Currently Existing Between Camden, Bayonne and PSE&G. BPU Docket No. EM01050327, July 24, 2001; I/M/O of the Application of Newark Bay Cogeneration Partnership, L.P. and PSE&G for the Approval of an Amendment and Restatement of the Power Purchase and Interconnection Agreement and Gas Service Agreement Currently Existing Between Newark Bay Cogeneration Partnership and PSE&G. BPU Docket No. EE00040245, July 7, 2000.

NATURE OF THE DISPUTE

Specifically, the dispute between PSE&G and the Sellers pertained to the correct interpretation of the contractual rights and obligations for the sale and delivery of capacity under Article II, Section C of the restructured PPAs with respect to the limits of delivery point(s) of capacity to PSE&G. The Company asserted that it is the Sellers' obligation to meet their contractual capacity commitments under the restructured PPAs by providing PSE&G with capacity that is electrically located within PJM's Eastern MAAC, so as to enable PSE&G to be capable of satisfying the requirements of loads within the PSE&G zone. The Sellers disagreed with the Company's interpretation of the contractual rights and obligations for the sale and delivery of capacity, claiming that capacity may be delivered at any delivery point of Sellers' choosing without limit to any deliverability zone, and without reference to where PSE&G has load obligations, since the objective of the renegotiated contracts was for the Sellers to be able to use a portfolio approach, rather than being tied to a specific plant location.

The Petitioners also disagreed on the correct interpretation of the Seller's obligation pertaining to the distribution surcharge provision of the Eagle Point PPA. Contrary to the Company's assertion that the Seller's obligation to pay the distribution charges grows with the refinery's load growth, the seller claimed that the charges are based on the refinery load of 16 MW at the time of contracting. The Petitioners state that the refinery load has grown to approximately 30 MW from the time of the original PPA. In the event the issues in dispute could not be settled, the contracts at issue stated that the dispute would be subject to mandatory arbitration.

Rather than go to arbitration, PSE&G and the Sellers entered into negotiations on their dispute which ultimately resulted in the herein Petition for which they seek Board approval of this Consent Fee Agreement and accompanying Interpretation Letter.

TERMS OF THE CONSENT FEE AGREEMENT AND INTERPRETATION LETTER:

PSE&G and the Sellers agreed to execute Consent Fee Agreements with respect to the Newark Bay PPA, Bayonne-Camden PPA, and Eagle Point PPA requiring a Consent Fee of \$16/MW-day payable to PSE&G and creditable to the NGC for each MW of capacity that Seller(s) is required to supply under the PPAs. The Consent Fee payments are to continue for the duration of the applicable PPAs. The Agreement also provides for a lump sum payment of \$1,241,136 to PSE&G reflecting the total sum for the period effective from June 1, 2007 through October 31, 2007, assuming the date at which the Consent Fee Agreement was originally anticipated to take effect was November 1, 2007. Prospective monthly payments would be made to PSE&G thereafter.

In return, PSE&G signed an Interpretation Letter whereby it consented to the Sellers' interpretation of the restructured PPAs with respect to the delivery of capacity, stating that (1) Sellers have choice rights to supply capacity from anywhere within the PJM regional transmission organization ("RTO") and 2) Sellers' liabilities under the Distribution Surcharge Provisions of the Restructured PPAs shall not exceed \$2 million annually under all restructured contracts. The proposed Consent Fee capacity charge, of \$16/MW-day will provide additional credits to the NGC of approximately \$2.96 million in the 2007/2008 PP year, \$2.73 million in each of the 2008 through 2013 PP years and \$1.14 million for each of the 2013 through 2016 PP, years to the NGC deferred balance.

According to the Petitioners, the Consent Fee agreement and accompanying Interpretation Letter, resolve the dispute between the Sellers and PSE&G concerning the Sellers' obligations to deliver capacity under the Amended and Restated PPAs, and do not alter the provisions of the Amended and Restated PPAs. They argued that the \$16 Consent Fee is a reasonable compromise between the parties based on their evaluation of the risk they faced if the matter went to arbitration.

PROCEEDURAL HISTORY

The parties in this proceeding included PSE&G, the Sellers, Board Staff ("Staff"), and the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") (collectively referred to herein as "the Parties").

Staff and Rate Counsel propounded numerous discovery requests on the Petitioners and received responses thereto. The Parties also engaged in several discovery and settlement conferences on the issues in the petition. Although a settlement could not be reached among all the Parties, Petitioners agreed to revise the Consent Fee Agreement and Interpretation Letter to reflect the concerns expressed by Staff and Rate Counsel. Rate Counsel indicated that it neither objected to nor supported approval of the revised Consent Fee Agreement and Interpretation letter.

REVISED CONSENT FEE AGREEMENT AND INTERPRETATION LETTER

On January 11, 2007, following extensive discussions involving the Petitioners, Staff and Rate Counsel, the Petitioners executed a revised Consent Fee Agreement and Interpretation Letter reflecting a fee of \$17/MW-day for each MW of capacity supplied under the restructured PPA instead of the \$16/MW-day fee originally proposed. The lump-sum payment to be made to PSE&G, covering the period June 1, 2007 through January 31, 2008 will be \$2,111,655 under the revised agreement which will be applied as a credit to PSE&G's NGC account.

Also, per the Interpretation Letter, PSE&G consents to the interpretation of the restructured PPAs whereby the total aggregate liability of the Seller(s) under the Distribution Surcharge provisions of the Restructured PPAs shall not exceed \$3 million annually, instead of the \$2 million as originally proposed. All other aspects of the original petition, consent Fee Agreements, and interpretation Letters remain unchanged.

DISCUSSION AND FINDINGS:

The Petitioners show that the final agreement provides substantial benefits to PSE&G ratepayers through enhanced contributions to the NGC deferred balance and assures as well that the Company can continue to collect Wires Charges at higher electric loads than the CEPOC refinery is currently being operated.

We observe that given the first three RPM Planning Period (PP) prices identified above, total revenues to be credited to the NGC will be significantly higher. These prices represent increases of \$35/MW-day, \$106/MW-day and \$91/MW-day capacity credits to the NGC compared to the \$6/MW day capacity price prevalent prior to the RPM auction. These capacity charge increases equate to additional \$6.5 million in credits to the NGC in 2007/2008, and \$17 million per year in each of 2008/2009 and 2009/2010 PPs. While these benefits will accrue to ratepayers irrespective of this settlement, it highlights the reasonableness of accepting guaranteed additional credits to the NGC from the Consent Fee of \$17/MW-day of this agreement, in contrast to the uncertainties embodied in a litigated/arbitrated outcome. The estimated total contributions to the NGC at \$17/MW-day are \$3.15 million in the 2007/2008 PP year, \$2.9 million in each of the 2008 through 2013 PP years and \$1.121 million for each of the 2013 through 2016 PP years.

The Board takes into consideration the Petitioners' assertion that, pursuant to the terms of the restructured PPAs, the dispute would be subject to the mandatory dispute resolution procedure contained in these agreements, if not resolved to the mutual satisfaction of the contestants. We recognize that this revised agreement helps avoid the risk of an arbitration outcome that may be detrimental to the interest of ratepayers.

The revised agreement calls for a \$3 million cap annually on the distribution surcharge under all restructured contracts. Petitioners claim that this cap will be reached only if the Eagle Point plant is dispatched a highly unlikely 74% of the hours in the year. They assert that this \$3 million cap is unlikely to be reached given the recent history of on-site sales by Eagle Point which contributed only approximately \$0.66 million in Wires Charges to PSE&G in 2006. The Board underscores that the increase of the cap to \$3 million, without jeopardizing the amount of potential reimbursements to PSE&G for foregone wires charges, facilitates the settlement of this dispute by providing the certainty of a fixed upper limit sought by the Sellers with respect to their financial exposure under the restructured contracts.

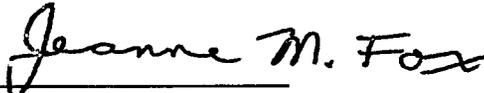
The Board further understands that, in the estimation of the Petitioners, for PSE&G foregoing the receipts of contracted amounts of capacity credits at guaranteed points electrically located within Eastern MAAC, the proposed consent Fee of \$17/MW-day payable to the Company is a reasonable compromise both in terms of the potential financial benefits to the NGC deferred balance, and the fixed exposure to the sellers with the \$3 million cap on the distribution surcharge. As such, we view the revised Consent Fee Agreement and the Interpretation Letter as facilitating an expedited acceptable reduction of the NGC deferred balance.

Having reviewed the agreement, the Board is satisfied and **HEREBY FINDS AND ACCEPTS** the revised Consent Fee Agreement and accompanying Interpretation Letter as a reasonable resolution of the dispute concerning the interpretation of the provisions of the Amended and Restated PPAs providing for the provision of capacity by Sellers and for the payment of distribution surcharge amounts. The Board thus **CONFIRMS** that in accepting the Consent Fee agreement and Interpretation Letter, the Board is not altering in any way its approval of the above listed dockets approving the Amended and Restated Newark Bay, Bayonne-Camden and Eagle Point PPAs consistent with, and pursuant to the provisions of N.J.S.A. 48:3-61(I). In this regard, the Board is assured by the representation by PSE&G and the Sellers that the Wires Charge cap of \$3 million per year on reimbursements of foregone wires charges related to on-site electric sale by the NUGs will be sufficient to compensate PSE&G for reasonably anticipated foregone Wires Charges. Accordingly, the Board **HEREBY ADOPTS** the attached Consent Fee Agreement and Interpretation Letter as a supplement to the Amended and Restated PPAs, incorporating by reference its terms and conditions as if fully set forth herein

and **HEREBY ORDERS** the Sellers to pay PSE&G as per the terms of the settlement, the adjusted lump sum amount totaling of \$2,111,655 reflecting the agreed upon Consent Fee of \$17/MW-day consisting of \$512,295, \$787,185, and \$812,175 for the Newark Bay, Camden/Bayonne and Eagle Point PPAs, respectively, for the period June 1, 2007 through January 31, 2008 for credit to the NGC.

DATED: *February 4, 2008*

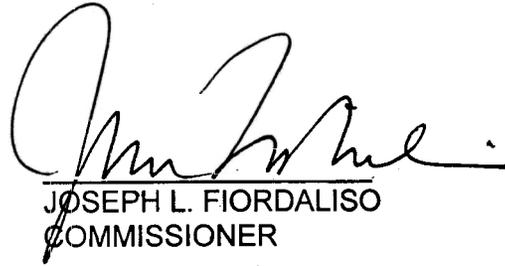
BOARD OF PUBLIC UTILITIES
BY:



JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



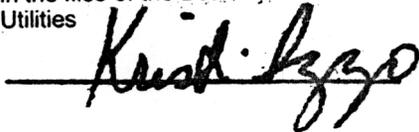
JOSEPH L. FIORDALISO
COMMISSIONER

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



PUBLIC SERVICE ELECTRIC AND GAS and CEDAR BRAKES
Request for Order of Acceptance and Confirmation.

BPU DOCKET NOS. EE00040245, EM1050327, EM01080489, EO07120987.

BPU

Alice Bator, Bureau Chief
Board of Public Utilities
Division of Energy
Two Gateway Center
Newark, NJ 07102
PHONE: (973) 648-2448
FAX: (973) 648-7420
Alice.bator@bpu.state.nj.us

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
PHONE: (973) 648-3426
FAX: (973) 638-2409
kristi.izzo@bpu.state.nj.us

Nnajindu Ugoji
Board of Public Utilities
Division of Energy
Two Gateway Center
Newark, NJ 07102
PHONE: (973) 648-2219
FAX: (973) 648-2467
nnajindu.ugoji@bpu.state.nj.us

Nusha Wyner, Director
Board of Public Utilities
Division of Energy
Two Gateway Center
Newark, NJ 07102
PHONE: (973) 648-3621
FAX: (973) 648-2467
nusha.wyner@bpu.state.nj.us

DAG

Margaret Comes, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102
PHONE: (973) 648-4866
FAX: (973) 648-7156
Margaret.comes@law.dol.lps.state.nj.us

Alex Moreau, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102
PHONE: (973) 648-3762
FAX: (973) 648-3555/3879
Alex.Moreau.comes@law.dol.lps.state.nj.us

ADVOCATE

Lisa Gurkas
Division of Rate Counsel
31 Clinton Street, 11th Floor
Newark, NJ 07102
PHONE: (973) 648-2690
FAX: (973) 648-1047
lgurkas@rpa.state.nj.us

Paul Flanagan
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
PHONE: (973) 648-2690
FAX: (973) 624-1047
pflanagan@rpa.state.nj.us

Ami Morita, DPA
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
PHONE: (973) 648-2690
FAX: (973) 624-1047
amorita@rpa.state.nj.us

SELLERS

Kenneth W Irvin,
Daniel A. Mullen, Esq.
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005
PHONE: (202) 756-8000
FAX: (202) 756-8087

PSE&G

Federick W. Lark,
Vice President-Business Analysis
PSE&G Services Corporation
80 Park Plaza, TSG-8
Newark, NJ 07101
PHONE: (973) 430-8058
FAX: (973) 430-5983

Anthony Robinson,
Director of BGS/BGSS Services
PSE&G Services Corporation
80 Park Plaza, TSG-8
Newark, NJ 07101

Kenneth Carretta,
General Regulatory Markets Counsel
PSE&G Services Corporation
80 Park Plaza, TSG-5
Newark, NJ 07101

Tom Thackston,
Assistant General Regulatory Counsel
PSE&G Services Corporation
80 Park Plaza, TSG-5
Newark, NJ 07101

GABEL ASSOCIATES

Robert Chilton,
Executive Vice President
Gabel Associates
417 Denison Street
Highland Park, NJ 08904
PHONE: (732) 296-0770

Thomas P. Thackston
Assistant General Regulatory Counsel

Law Department
80 Park Plaza, T5G, Newark, NJ 07102-4194
tel: 973.430.8878 fax: 973.430.5983
email: thomas.thackston@pseg.com



January 11, 2008

VIA HAND DELIVERY

Nusha Wyner, Director
Division of Energy
New Jersey Board of Public Utilities
Two Gateway Center – 9th Floor
Newark, NJ 07102

Re: Request for Order of Acceptance and Confirmation, filed August 30, 2007, BPU
Docket Nos. EE00040245, EM01050327, EM01080489 (the "Application")

Dear Nusha:

By this letter Public Service Electric and Gas Company ("PSE&G"), Cedar Brakes I, L.L.C. ("CB1"), Cedar Brakes II, L.L.C. ("CB2," f/k/a Cedar Brakes IV, L.L.C.), Utility Contract Funding, L.L.C. ("UCF," f/k/a Cedar Brakes, III, L.L.C. or "CB3"), Constellation Energy Commodities Group, Inc. ("CECG"), Morgan Stanley Capital Group Inc. ("MSCG"), El Paso Marketing LP ("EPM," f/k/a El Paso Merchant Energy L.P.) (CB1, CB2, UCF, CECG and EPM are collectively "Sellers"), hereby submit revised, executed ~~Consent Fee Agreements and final forms of Interpretation Letters pertaining to the above-~~referenced matter. Terms not defined here have the meaning assigned in the Application.

As you know, on August 30, 2007, PSE&G and Sellers filed the Application requesting the BPU to issue an order that (i) accepts the Consent Fee Agreement and accompanying Interpretation Letter in the Application as a reasonable resolution of the disagreements concerning the interpretation of the provisions of the Amended and Restated PPAs providing for the provision of capacity by Sellers and for the payment of distribution surcharge amounts; and (ii) confirms that in accepting the Consent Agreement and Interpretation Letter, the Board is not altering in any way, and indeed reiterates, its approval and its underlying findings in its Orders under the above-listed dockets approving

the Amended and Restated Newark Bay, Bayonne-Camden and Eagle Point PPAs consistent with, and pursuant to the provisions of N.J.S.A. 48:3-61(l), and its findings that PSE&G shall be able to fully and timely recover from its electric customers all incurred costs and charges associated with the Amended and Restated PPAs (as interpreted in the Interpretation Letter) through the established rate recovery mechanisms, including recovery of above-market payments through the NTC. Since then, the Parties have engaged in extensive discovery, information exchange, and settlement talks culminating with the commitment by Staff to support and recommend the issuance of an Order by the BPU granting the relief requested in the Application, subject to certain modifications to the original Application.

Specifically, the parties have executed revised Consent Fee Agreements such that the consideration paid to PSE&G for issuing the Interpretation Letters shall be \$17/MW-day for each MW of Capacity supplied under the restructured PPAs instead of the \$16/MW-day originally proposed. Conforming changes have also been made to the lump sum payment amount to reflect this revision of the Consent Fee payment amount from \$16 to \$17/Mw-day and the change in the initial payment date occasioned by the slippage in the anticipated date of issuance of the BPU Order from the October 10, 2007 date originally requested in the Application. The lump-sum payment to be made to PSE&G, covering the period June 1, 2007 through January 31, 2008, (assuming a vote granting the requested relief by February 1, 2008 and issuance of a BPU Order granting the requested relief by no later than February 15, 2008), will be \$2,111,655, which will be applied as a credit to PSE&G's NGC account. Additionally, the specified form of Interpretation Letter has been revised such that PSE&G consents to the interpretation of the restructured PPAs whereby the total aggregate liability of Seller(s) under the Distribution Surcharge provisions of the Restructured PPAs shall not exceed \$3 million annually, instead of the \$2 million annually originally proposed. All other aspects of the Application, Consent Fee Agreements and Interpretation Letters shall remain unchanged.

Attached are executed, revised Consent Fee Agreements between PSE&G and El Paso and PSEG and Constellation, and revised forms of Interpretation Letters, that memorialize the modifications to which the Parties have agreed, and which supersede and ~~replace the prior Consent Fee Agreements and accompanying Interpretation Letters~~ submitted in August 2007 with the Application. It is emphasized the modifications and revised agreements have been agreed upon with the express understanding that the Application will be considered at a BPU agenda meeting not later than the February 1, 2008. Moreover, similar to the original agreements submitted with the Application on August 30, 2007, the revised Consent Fee Agreements contain conditions precedent including: that the BPU will vote by February 1, 2008; that the BPU will issue a written Order granting the requested relief by no later than February 15, 2008; and that the BPU Order be in a form and of a substance not objectionable to any Party.

We appreciate the Staff's diligence with respect to its review of this matter, and the Parties stand ready to assist you in meeting the requested timeline.

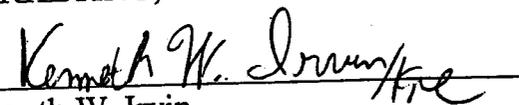
Respectfully submitted,

PUBLIC SERVICE ELECTRIC AND GAS
COMPANY

By: 

Thomas P. Thackston, Esq.
PSEG Services Corporation
80 Park Plaza, T5G
Newark, New Jersey 07102
(973) 430-8878
(973) 430-5983 (fax)

CEDAR BRAKES I, L.L.C.; CEDAR
BRAKES II, L.L.C.; UTILITY
CONTRACT FUNDING, L.L.C.;
CONSTELLATION ENERGY
COMMODITIES GROUP, INC.;
MORGAN STANLEY CAPITAL
GROUP, INC.; AND EL PASO
MARKETING, L.P.

By: 

Kenneth W. Irvin,
Daniel A. Mullen, Esq.
On Behalf of Seller Parties
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005
(202) 756-8000
(202) 756-8087 (fax)

cc: Alice Bator, BPU Staff
Naji Ugoji, BPU Staff
Alex Moreau, NJ Division of Law, DAG for Staff
Paul Flanagan, NJ Division of Rate Counsel
Ami Morita, NJ Division of Rate Counsel
Kurt Lewandeski, NJ Division of Rate Counsel
