



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE APPLICATION OF)
CINNAMON BAY LLC AND PSE&G FOR THE)
APPROVAL OF AN AMENDMENT AND RESTATEMENT)
OF THE EXISITNG POWER PURCHASE AND)
INTERCONNECTION AGREEMENT BETWEEN)
O'BRIEN BIOGAS IV AND PSE&G) DOCKET NO. EO10080538

(SERVICE LIST ATTACHED)

APPEARANCES:

Vilna Waldron Gaston, Esq., on behalf of Public Service Electric and Gas Company

Paul Flanagan, Esq., Deputy Rate Counsel, **Ami Morita, Esq.** and **Diane Schulze, Esq.**,
Assistant Deputy Rate Counsels, Division of Rate Counsel (**Stefanie A. Brand, Esq.**, Director,
New Jersey Division of Rate Counsel)

Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities
(**Paula T. Dow**, Attorney General of New Jersey)

George J. Tyler, Esq., on behalf of Cinnamon Bay LLC

BY THE BOARD:

On August 13, 2010, Public Service Electric and Gas Company ("PSE&G" or "Company"), along with Cinnamon Bay LLC ("Cinnamon Bay") (collectively, the "Petitioners") filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") requesting expedited consideration of an amendment and restatement of a Power Purchase and Interconnection Agreement ("Amended PPA") between PSE&G and Cinnamon Bay ("Petition"). In addition, the Petitioners sought a determination from the Board that the Amended PPA would result in a substantial reduction in the total stranded costs of the utility, which resulting savings will be passed through to ratepayers on a full and timely basis, pursuant to Section 13 (l) (1) of the Electric Discount and Energy Competition Act ("EDECA").

1992 O'BRIEN PPA

On April 9, 1992, PSE&G and O'Brien Biogas IV, LLC ("O'Brien") entered into a Power Purchase and Interconnection Agreement ("O'Brien PPA") which was approved by Board Order

dated February 18, 1993.¹ The O'Brien PPA contemplated that the facility would burn methane gas obtained from the closed and capped Edgeboro Landfill in East Brunswick, N.J., and recover energy in the form of steam and electricity, with electrical interconnection with the PSE&G system at 26.4 kV. The O'Brien facility was rated at approximately 9.8 MW, with a net electrical output of 9.5 MW. Pursuant to the agreement, O'Brien agreed to sell to PSE&G, and PSE&G agreed to purchase in satisfaction of its obligations under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 796 et seq. ("PURPA"), one hundred percent of the net electrical energy and capacity output of the facility for a fifteen (15) year term from the date of first commercial operation, which was October 1, 1997.² The O'Brien PPA incorporated the Standard Pricing Offer No. 2 for Purchase of Capacity and Energy by PSE&G from Qualifying Facilities dated March 12, 1991, and issued by PSE&G in response to orders of the Board in Docket No. 8010-687.³ Upon the commencement of operation, the facility was fueled by landfill gas delivered by NEO Edgeboro LLC ("NEO") and collected by NEO through a series of wells and pipes constituting a collection system at the Edgeboro Landfill pursuant to a gas lease with Edgeboro Disposal, Inc. ("EDI"), the former operator of the landfill, and several other parties with ownership interests in it. The landfill reached its permitted capacity in 1987.

PSE&G/ O'BRIEN DISPUTE

In 1991, the Middlesex County Utilities Authority ("MCUA") exercised its eminent domain authority to acquire portions of the property on which the Edgeboro Landfill was located in order to allow the MCUA to use the adjoining property on the same site for waste disposal purposes. MCUA obtained the right to landfill solid waste around, next to and over the top of the former Edgeboro Landfill. The Middlesex County Landfill is the primary waste disposal site for Middlesex County. The two landfills are legally separated; both as to ownership and operation, and each one has its own gas collection system. O'Brien did not have any contractual right to purchase landfill gas from the Middlesex County Landfill, which is physically separated by the Edgeboro Landfill's cap and the Middlesex County Landfill's bottom liner.

In June 2008, O'Brien notified PSE&G that it was claiming that a force majeure event had occurred under the O'Brien PPA because the MCUA's adjoining landfill operation had led to the collapse of a portion of NEO's gas collection system. According to O'Brien, this diminished the collection of gas to the point where O'Brien could not operate its power plant and, therefore, could not deliver the contract power output under the O'Brien PPA to PSE&G. The O'Brien facility ultimately ceased operations on October 21, 2008. Effective November 20, 2008, NEO transferred title and control of its landfill gas collection system to EDI. A new landfill gas collection system has been constructed by EDI to accommodate the expansion of landfill operations by the MCUA.

PSE&G contended that O'Brien was aware of the MCUA's future plans to construct and operate its landfill around and over the top of the Edgeboro Landfill at the time O'Brien entered into a gas lease with NEO, and further that modifications to the gas collection system required by NEO's gas lease with EDI and the owners of the Edgeboro Landfill were not made to ensure the ongoing adequacy of gas supply to meet its generation obligations to PSE&G under the O'Brien

¹ I/M/O the Joint Petition of Public Service Electric and Gas Company and O'Brien Biogas IV, Inc. for Approval of a Power Purchase and Interconnection Agreement, BPU Docket No. EM92060684, Order dated February 18, 1993.

² The O'Brien PPA would have expired by its terms on September 30, 2012.

³ I/M/O Consideration and Determination of Cogeneration and Small Power Production Standards Pursuant to PURPA, BPU Docket No. 8010-687B, Order dated September 28, 1988.

PPA. As such, PSE&G believed that the loss of the landfill gas as a fuel source did not create a force majeure condition under the contract that would relieve O'Brien of its obligations. Additionally, PSE&G stated that it had notified O'Brien that it had already committed the O'Brien PPA capacity in the PJM forward capacity market through 2012 ("O'Brien Legacy Capacity Costs") and would therefore be adversely impacted if it had to now obtain replacement capacity to cover the shortfall. Finally, PSE&G claimed that its ratepayers would be further harmed by the loss of the renewable energy credits ("RECs") associated with the contracted energy supply. EDI filed a lawsuit against both O'Brien and NEO in the Federal District Court for the District of New Jersey in order to acquire the legal right to construct the new gas collection system, to establish the Cinnamon Bay Facility and to correct the alleged violations of other parties. Ultimately, a settlement was reached, allowing for the construction of a new gas collection and control system and resulting in EDI's entry into purchase agreements with NEO and O'Brien for the landfill gas system and the gas to the energy facility. On April 22, 2010, Cinnamon Bay purchased the generating assets of O'Brien and O'Brien requested that PSE&G consent to the assignment of its rights and obligations under the O'Brien PPA to Cinnamon Bay.

THE SETTLEMENT AND AMENDED PPA

After negotiations, PSE&G, O'Brien, and EDI reached a global settlement, including the dispute between PSE&G and O'Brien ("Settlement"). The Settlement provided for the sale of the O'Brien generating facility assets to EDI (which have in turn been assigned to Cinnamon Bay); the repowering of the former O'Brien facility to establish the Cinnamon Bay facility with new, more efficient equipment; Cinnamon Bay's assumption of all rights and obligations of O'Brien under the O'Brien PPA; the continuation of an Amended PPA with PSE&G for a term of seven (7) years following the initial date of commercial operation, with pricing of the energy under PSE&G Purchased Electric Power ("PEP") tariff; Cinnamon Bay's ownership of all rights in the RECs associated with the power output under the Amended PPA; Cinnamon Bay's payment of \$1.5 million to PSE&G as a "Ratepayer Make Whole Payment"⁴; and the amendment and restatement of the O'Brien PPA to reflect the preceding changes.

According to the Petition, as a result of the Amended PPA, PSE&G will no longer have any obligation to purchase or pay for capacity from the Cinnamon Bay facility. The Company will only be required to purchase and pay for the energy supplied at PEP Tariff prices. The PEP Tariff prices are tied to the zonal Locational Marginal Price ("LMP") of energy in PSE&G's service area as established in the PJM energy markets. In addition, PSE&G will have no responsibility or liability associated with scheduling of capacity into the PJM markets.

The Petitioners submit that the Amended PPA is a "buydown" and a "new power contract", and therefore all amounts paid by PSE&G under the Amended PPA will qualify as "stranded costs" related to long-term power contracts with non-utility generators ("NUGs"). Under the Amended PPA, PSE&G will receive a price reduction in the form of "Ratepayer Make Whole Payments" in consideration for its agreement to modify the O'Brien PPA so as to permit Cinnamon Bay to operate the Cinnamon Bay facility for a term of 7 years. According to the Petition, Section 13 (l) (1) of the EDECA states that the Board may approve the restructuring of a PPA if it determines that the restructuring "will result in a substantial reduction in the total stranded costs

⁴ This payment reflects an estimated value of the RECs over what would have been the remaining term of the O'Brien PPA. The \$1.5 million payment would be payable to PSE&G in three installments: twelve months following the effective date, twenty-four months following the effective date, and the final payment to be made no later than October 9, 2012. PSE&G will credit these payments as credits to its Non-Utility Generation Charge ("NGC") clause.

of the utility, which resulting savings will be passed through to ratepayers on a full and timely basis.”

According to the Petitioners, PSE&G's stranded costs will be reduced by \$1.5 million. PSE&G represents that these savings will be passed on to its customers through the NGC to reduce amounts that ratepayers would otherwise be required to pay as stranded costs pursuant to Section 13 of EDECA and the provisions of Board's Final Order dated August 24, 1999 in Docket Nos. EO97070461, EO97070462, and EO97070463 (“Restructuring Order”).⁵ Moreover, PSE&G states that it was able to secure replacement capacity for the O'Brien facility in the third incremental RPM auctions for 2009/2010 and 2010/2011 at a clearing price lower than the 2009/2010 and 2010/2011 base residual auction. PSE&G recognizes that it will also be required to procure replacement capacity for the O'Brien facility for the 2011/2012 delivery year. PSE&G maintains that through July 2010, its replacement capacity purchases have had a beneficial impact of approximately \$240,000 for PSE&G's electric customers. All of this benefit has been credited to customers in the non-utility generation deferral account. PSE&G cannot estimate whether or not the replacement capacity costs for the 2011/2012 RPM delivery year will result in a beneficial or adverse impact.

REQUEST FOR EXPEDITED CONSIDERATION

The Petitioners have requested expedited review and consideration of this Petition by the Board in order to address the environmental issues, increase energy conservation and to meet key tax deadlines associated with project funding. According to the Petition, since the O'Brien facility was shut down on October 21, 2008, the operators of the Edgeboro Landfill have been forced to flare the BTU equivalent of eight million gallons of fuel per year, effectively wasting the energy resource. In addition, Cinnamon Bay's construction funding is contingent on approval of the Amended PPA by the BPU, and the Petitioners submit that unless construction is underway in the 2010 calendar year, Cinnamon Bay's Investment Tax Credit will be at risk.

RATE COUNSEL COMMENTS

On September 21, 2010, the Division of Rate Counsel (“Rate Counsel”) submitted its comments to the Board concerning the Petition. In its comments, Rate Counsel states that it does not object to the Board's approval of the proposed Amended PPA. Rate Counsel recommends however that, as an additional ratepayer protection, the Board instruct PSE&G to account separately for any net costs resulting from the Amended PPA (including O'Brien Legacy Capacity Costs) and to seek separate Board approval, outside of the Company's annual NGC filing, for any costs over and above the \$1.5 million Ratepayer Make Whole Payments plus the capacity market gain to date of \$240,000.

PSE&G's RESPONSE

On September 24, 2010, the Company filed a response to Rate Counsel's comments stating that although PSE&G appreciates Rate Counsel's statement that it has no objection to Board approval of the Petition, it takes issue with Rate Counsel's recommendations. PSE&G argues that there is no legitimate basis to require as a condition of the Board's approval of the Amended PPA that PSE&G separately file for cost recovery of potential costs associated with

⁵ I/M/O Public Service Electric and Gs Company's Rate Unbundling, Stranded Costs and Restructuring Filings, Docket Nos. EO97070461, EO97070462, and EO97070463, Summary Order dated April 21, 1999 and Final Order dated August 24, 1999.

the Amended PPA and legacy capacity costs in excess of the \$1,740,000, if by that Rate Counsel is seeking to put the Company at risk for those costs.

PSE&G asserts that it seeks to obtain the Board's concurrence that the proposed transaction is in the best interests of consumers overall notwithstanding all known and unknown risks. PSE&G states that it understands that the actual costs it incurs in connection with this contract will be subject to a later prudency review when PSE&G ultimately files for recovery of its costs as part of the NGC filing. According to the Company, there is no need to treat the costs associated with the Cinnamon Bay contract differently from the costs incurred by PSE&G under its other contracts with non-utility generators. PSE&G argues that the prudency of the whether to enter into the proposed transaction at all is the question now before the Board.

If the Board agrees that ratepayers benefit and find that it is prudent for PSE&G to proceed with the transaction, PSE&G will do so. If the Board finds otherwise, PSE&G will not proceed. PSE&G thus urges the Board not to adopt Rate Counsel's recommendation, and instead grant the approval requested by PSE&G and Cinnamon Bay in the Petition.

DISCUSSION AND FINDINGS

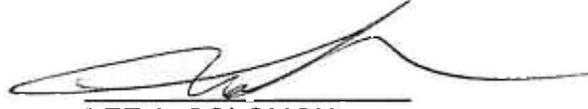
Having reviewed this matter, the Board **HEREBY FINDS** that the Amended PPA complies with the directives and conditions set forth in the Restructuring Order, which required PSE&G to take steps to mitigate the above market NUG costs and to make reasonable efforts to renegotiate its above-market NUG contracts. The Board **FURTHER FINDS** that the Amended PPA satisfies the requirements of N.J.S.A. 48:3-61 that the Board may approve a contract that is the result of the renegotiation only if the new contract will result in a substantial reduction in the total stranded costs of the utility with the savings passed through to ratepayers. The Board notes that since October 2008 the facility has been shut down and is wasting the renewable energy resource. Absent the Amended PPA, ratepayers would have neither the environmental benefits of the facility nor the economic benefit of the Ratepayer Make Whole Payments. The Board further notes that as a result of the Amended PPA, PSE&G will no longer have any obligation to purchase or pay for capacity from the Cinnamon Bay facility. Instead, PSE&G will only be required to purchase and pay for the energy supplied by the Cinnamon Bay facility at the PEP tariff price, which is a market based rate tied to the PJM spot market price for energy applicable to PSE&G's transmission zone. Further, the Board is satisfied that the Amended PPA represents a fair and reasonable resolution of the issues and is in the public interest.

With respect to Rate Counsel's recommendation that PSE&G be required to separately account for and file for recovery of the net costs associated with the Amended PPA if the costs exceed the amount of the Ratepayer Make Whole Payments plus capacity market gain to date, the Board **HEREBY FINDS** that the appropriate proceeding to review any of the costs associated with the Amended PPA for reasonableness and prudency is the Company's annual NGC proceeding. The Board **FURTHER FINDS** that it would be administratively inefficient to review one PPA separately from other NUG contracts. Accordingly, the Board **HEREBY DIRECTS** PSE&G to account separately for any net costs resulting from the Amended PPA (including O'Brien Legacy Capacity Costs) in the annual NGC proceeding. Pursuant to the Board's Summary Order dated July 31, 2003, in Docket No. ER02080604, PSE&G submits monthly reports to the Board detailing all NUG energy sales. The energy sales of this facility have in the past been included in these reports and will now be included under the Amended PPA. The Board **DIRECTS** PSE&G to submit a copy of all monthly NUG Energy Sales reports to Rate Counsel concurrently with the filing of this report with the Board.

Therefore, the Board **HEREBY APPROVES** the Amended PPA subject to the conditions described above.

DATED: 10/5/10

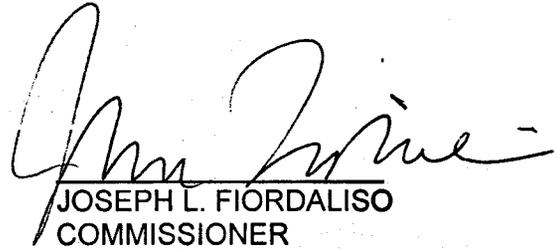
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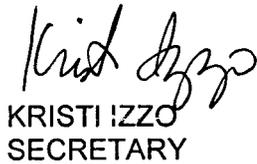


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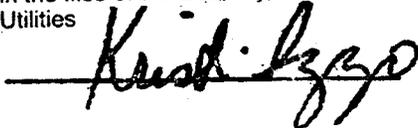
ELIZABETH RANDALL
COMMISSIONER

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



**IN THE MATTER OF THE APPLICATION OF CINNAMON BAY LLC AND PUBLIC SERVICE
ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN AMENDMENT AND RESTATEMENT OF
THE EXISTING POWER PURCHASE AND INTERCONNECTION AGREEMENT BETWEEN O'BRIEN
BIOGAS IV, LLC AND PSE&G**

**Docket No. EO10080538
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