

BEFORE THE STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES

**I/M/O THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY)
FOR APPROVAL OF A SOLAR ENERGY) BPU DKT. NO. EO07040278
PROGRAM AND AN ASSOCIATED COST)
RECOVERY MECHANISM)**

**SURREBUTTAL TESTIMONY OF DIAN P. CALLAGHAN
ON BEHALF OF THE
NEW JERSEY DEPARTMENT OF THE PUBLIC ADVOCATE,
DIVISION OF RATE COUNSEL**

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1 **Q. Please state your name and business address.**

2 A. My name is Dian P. Callaghan. I am currently retained as a Senior Consultant by
3 McFadden Consulting. My business address is 7843 E. 6th Place, Denver,
4 Colorado 80230.

5
6 **Q. Did you previously file testimony in this case?**

7 A. Yes. I filed Direct Testimony on September 21, 2007 on behalf of the New Jersey
8 Department of the Public Advocate, Division of Rate Counsel (“Rate Counsel”).
9 My testimony addressed the consumer protection impacts on the residential and
10 low-income residential segments of the Solar Energy Program (“Program”)
11 submitted to the Board of Public Utilities (“Board” or “BPU”) by Public Service
12 Electric and Gas Company (“PSE&G” or “Company”) on April 19, 2007.

13
14 **Q. What is the purpose of your Surrebuttal Testimony?**

15 A. The purpose of my Surrebuttal Testimony is to address the Rebuttal Testimony of
16 Company witness Frederick A. Lynk, as well as PSE&G’s response to a discovery
17 request that appears to clarify Mr. Lynk’s Rebuttal Testimony and to change the
18 Company’s Direct Testimony. Mr. Lynk’s rebuttal of my testimony is organized
19 into the following five topics: (I) Compliance with the Federal Truth in Lending
20 Act (“TILA”); (II) Residential Rebates; (III) PSE&G’s Loan vs. Home Equity
21 Loans; (IV) Consumer Risks; and, (V) Circumvention of BPU Regulations.

1 **Q. Based upon your review of PSE&G’s Rebuttal Testimony, are you proposing**
2 **any changes to the recommendations in your Direct Testimony?**

3 A. I am not proposing any changes to my recommendations. However, as I explain
4 below, the Company’s new residential loan origination option might, if more were
5 known about it, answer my concerns about third party loan transactions, and
6 perhaps other consumer protection issues as well. Since this new proposal was
7 contained in the Company’s response to discovery of its Rebuttal Testimony
8 provided on November 19, 2007, there is no time or mechanism to ascertain more
9 information about it for my Surrebuttal Testimony. Had the Company proposed
10 this option in its Rebuttal Testimony, it would have been fair game for timely
11 discovery questions and inclusion in my Surrebuttal Testimony. PSE&G’s
12 approach to providing the details of this important \$100 million Program gives
13 new meaning to the old saw that “it’s like buying a pig in a poke.”

14

15 **I. Compliance with Federal Truth In Lending Act.**

16

17 **Q. Please comment on Mr. Lynk’s Rebuttal Testimony on page 9, lines 15-23,**
18 **and page 10, lines 1-2, regarding provision of loans to residential customers**
19 **that comply with TILA and explain how the Company’s discovery response**
20 **clarifies Mr. Lynk’s statement in his Rebuttal Testimony.**

21 A. In his Rebuttal Testimony, Mr. Lynk simply asserts that residential customers will
22 receive all the protections required by TILA because “the entity” providing the
23 loans will be duly licensed to provide consumer loans. That vague assertion led

1 to the question of how the Company could ensure that these entities, assumed-to-
2 be solar developers, would be licensed and comply with all such regulations.
3 Recall that in its Direct Testimony, the Company stated it would not provide loans
4 directly to homeowners, but instead would provide loans to solar developers, i.e.,
5 the company selling or installing the solar equipment, or the housing developer or
6 contractor. PSE&G also stated the solar developer could then transfer the loan to
7 the Company. It was unclear how the Company could ensure that all solar
8 developers would be licensed properly and comply with TILA.

9
10 In response to Rate Counsel’s discovery question on the above-cited portion of
11 Mr. Lynk’s Rebuttal Testimony, PSE&G revealed that the Company, through a
12 subsidiary, will be the residential loan organization licensed by the New Jersey
13 Department of Banking and Insurance, subject to all of their regulations.¹ Now it
14 appears that the Company will provide loans directly to residential consumers
15 through this new subsidiary. The PSE&G subsidiary will comply with TILA in
16 making consumer loans. This response is a significant change from its Direct
17 Testimony and it raises numerous questions that must be answered before
18 concluding that it solves at least some of the consumer protection concerns I
19 raised in my Direct Testimony. In particular, one of my main concerns was about
20 the third party loan arrangements with the resulting confusion and financial risks
21 to residential customers.

¹ Response to RCR-RR-77.

1 **Q. Can you please provide a list of questions this new proposal for providing**
2 **residential consumer loans raises regarding consumer protections?**

3 A. Yes. The following are some questions that address the consumer protection
4 issues with the Company's proposal, and the Board may also want to determine
5 the organizational and financial relationship between this lending subsidiary and
6 PSE&G.

7 1. Will PSE&G originate all solar program loans to residential customers,
8 including low-income, single-family residential customers?

9 2. Will this PSE&G subsidiary also be responsible for loan closings? If
10 not, what entity will?

11 3. What specific changes, if any, will PSE&G make to its Loan
12 Agreement, application, and other loan documents to reflect this change,
13 including TILA disclosures?

14 4. Will this subsidiary determine credit-worthiness of applicants? If so,
15 what regulations are required, such as fair credit reporting requirements? Will
16 credit requirements differ for low-income customers?

17 5. Since this entity is a subsidiary of PSE&G, does that mean loan
18 assumption by PSE&G (the utility) is no longer necessary or an option?

19 6. Since PSE&G's subsidiary would now be lending directly to residential
20 customers, what specific Program details will change, if any?

21 7. Is it correct that with the PSE&G subsidiary lending directly to
22 residential customers, no third party defaults (such as by solar developers) can
23 occur?

1 8. Is it still an option that a solar developer could obtain the loan from
2 PSE&G, contract with the homeowner to install the solar energy system, and then
3 as project owner, contract with the homeowner to purchase the energy produced
4 through a power purchase agreement and customer agreement?

5 9. Is it correct that the residential loans from PSE&G's subsidiary would
6 require the solar developer to demonstrate the solar energy system is performing
7 before the loan is released to the customer?

8 10. With loans from PSE&G's subsidiary directly to residential customers,
9 the parties and the Board need details about the Program's similarities and
10 differences for each market segment: residential, low-income single family, low-
11 income multifamily, non-profit, commercial and industrial, and government.

12 11. Will all contracts and agreements between the residential customer and
13 the solar developer for system installation be part of the application between the
14 residential customer and PSE&G's subsidiary?

15 12. The parties and the Board will need details on the costs to be incurred
16 by the new proposal to have a PSE&G subsidiary make loans directly to
17 residential customers. Perhaps PSE&G should file a formal amended Petition to
18 detail this new proposal and any other proposed changes from the original filing.

19 13. PSE&G also should provide details on its proposed ratemaking
20 treatment for the costs and revenues of the new subsidiary.

21 14. The Company should give details on how the proposal for the new
22 subsidiary complies with the Board's regulations on competitive services and

1 affiliate relations, including the prohibition against cross-subsidization by
2 ratepayers.

3 This list of questions is not all inclusive since responses to these questions
4 might lead to other questions.

5

6

II. Residential Rebates

7

8 **Q. Please comment on Mr. Lynk’s statements in his Rebuttal Testimony on page**
9 **10, lines 4-15, that concern about rebates for the residential segment is**
10 **misguided.**

11 A. Mr. Lynk’s Rebuttal Testimony confirms that there is uncertainty about the level
12 and availability of rebates to residential customers for this Program. He states
13 that the BPU “could” approve a specific residential rebate amount for the
14 Company’s Program. The Company reaffirms that some level of rebate is
15 necessary, but has not requested that rebates of a specific amount be approved in
16 this proceeding for this Program. Instead, PSE&G says, in a discovery response,
17 that it “has not included a specific rebate amount and does not believe that it is its
18 place to dictate to the Clean Energy Program what level of rebate should be
19 provided.”²

20

21 If PSE&G believes some amount of residential rebate is necessary for its Program
22 to succeed, then it must have some idea what that amount is and should request it

² Response to RCR-RE-51.

1 in this proceeding. Until the uncertainty about the level and availability of
2 residential rebates for this Program is resolved, my concern remains.

3
4 Residential customers will consider the Company's loan interest rate and payback
5 method, the amount of the rebates offered, and the remaining amount to be
6 financed by the customer when deciding whether to participate in this Program.
7 The PSE&G loan interest rate of 12% is excessive, the availability and amount of
8 rebates is unknown, as is the resulting amount the customer has to finance.

9

10 **III. PSE&G's Loan vs. Home Equity Loans**

11

12 **Q. What is your response to Mr. Lynk's Rebuttal Testimony, page 10, lines 17-**
13 **25, and page 11, lines 1-5, that the proposed PSE&G loan and home equity**
14 **loans are not comparable?**

15 A. Mr. Lynk agrees that the nominal interest rate of the PSE&G loan may be higher
16 than for most home equity loans, but the financial risks and ease of payback favor
17 the PSE&G loan. The financial risk is loss of home with a home equity loan vs.
18 loss of solar system investment with the PSE&G loan. The home equity loan is
19 repaid in cash, whereas the PSE&G loan is repaid with SRECs or cash.

20

21 I will concede that the repayment of the PSE&G loan with SRECs is an attractive
22 feature and that home equity loans put a homeowner's home at risk, a heightened
23 concern in today's environment. But, Mr. Lynk misses the point. Most

1 homeowners will finance the solar energy system through a combination of
2 rebates (if available), cash, and loans. If a homeowner concludes the PSE&G
3 loan rate is too high, irrespective of repayment through SRECs, he or she may
4 simply say no to participating in the Program. If the rebate amount is too low, the
5 PSE&G loan rate is too high, and the home equity loan risk is too great,
6 residential customers will have three reasons to sit this Program out.
7 Unfortunately, they will still be paying the Societal Benefits Charge (“SBC”) that
8 funds the Program, a very significant equity consideration particularly for low-
9 income residential customers.

10 **IV. Consumer Risks**

11
12 **Q. In his Rebuttal Testimony at page 11, lines 7-18, Mr. Lynk states that many**
13 **of the risks to consumers described in your testimony are not unique to the**
14 **PSE&G offering. Please comment.**

15 A. Apparently, Mr. Lynk acknowledges the financial risks to residential customers
16 under PSE&G’s Program as described in my testimony on pages 10 and 11, but
17 dismisses them as no different from the risks that exist today when homeowners
18 contract for solar facilities. I disagree. This Program has unique and substantial
19 risks.

20
21 First, this is a Program offered by a public utility and, as such, consumers may
22 view it as less risky. As the customer rightly sees it, the utility is offering a
23 Program scrutinized and sanctioned by the government with the Board of Public

1 Utilities' approval and oversight. Second, the nature of the third party loan
2 transactions (PSE&G lends to the solar developer who lends to the customer,
3 which loan may then be assumed by PSE&G) creates the potential for a third
4 party default by the solar developer, completely out of the customer's control. As
5 I discussed previously, this risk may now be eliminated by the Company
6 providing loans directly to residential customers through a subsidiary. Third, as
7 described in my Direct Testimony, the Loan Agreement has a provision that
8 requires the borrower to pay the outstanding balance within 30 days of PSE&G's
9 notice if the rate treatment proposed by the Company in its Petition is impaired or
10 disallowed by a later governmental decision. These risks are unique to PSE&G's
11 Program.

12
13 That said, Mr. Lynk is correct that homeowners do incur risks in today's
14 marketplace when contracting for solar energy systems, or any home repair or
15 improvement work. Most of these risks occur because the homeowner contracted
16 with an unscrupulous company, or failed to protect themselves by carefully
17 scrutinizing the contract with the company. These are risks common to
18 contracting with private companies, whether solar developers or roofers.
19 Preventing negative consequences is largely within the customer's control. This
20 is not true for PSE&G's Program. We should hold a utility to a higher standard
21 because the regulatory oversight historically provided by state and federal
22 agencies is expected and relied upon by consumers. "Buyer beware" are the
23 watchwords in consumer dealings with other contractors.

1 **V. Circumvention of BPU Regulations**

2

3 **Q. Please comment on Mr. Lynk’s statement that the Company’s Program will**
4 **not circumvent any applicable BPU regulations.**

5 A. Mr. Lynk in his Rebuttal Testimony at page 11, lines 20-25, and page 12, lines 1-
6 15, makes two points. First, he states that PSE&G’s Program has no impact on
7 licensing of Third Party Suppliers (“TPSs”). Second, the Program will not
8 circumvent any applicable BPU regulations.

9

10 The Company’s Program does impact whether solar developers who sell energy
11 under this Program are licensed as TPSs. The Program currently includes an
12 option whereby the solar developer would own the solar system and sell the
13 power produced through a purchase power agreement and customer agreement
14 with the homeowner or customer. As currently structured, neither the power
15 purchase nor customer agreements would be subject to BPU oversight. To the
16 extent the solar developer is selling power to an end-use customer, we are asking
17 the question: “If a solar developer sells power to an end-use customer, under the
18 BPU regulations, wouldn’t they be considered a TPS?” If the answer to this
19 question is yes, then a whole panoply of regulations governing TPSs comes into
20 play. The regulatory ramifications of licensing solar developers as TPSs are
21 important to customers and to solar developers and should be addressed by the
22 BPU in this proceeding.

23

1 Regarding service discontinuance, Mr. Lynk states that PSE&G's practice is to
2 assume a TPS's receivables, bill for the TPS's charges on the utility's bill, and
3 disconnect for nonpayment treating all the charges as utility charges. Mr. Lynk
4 does not assert that this practice is permitted by the BPU's rules, only that it is
5 consistent with current service discontinuance practices.

6
7 My review of the BPU's rules is that this practice of discontinuing utility service
8 for nonpayment of a TPS's charges when the utility assumes the TPS's
9 receivables and bills for those charges is not explicitly permitted or prohibited,
10 but it is completely inconsistent with a competitive generation market and with
11 the BPU's current and proposed service discontinuance rules.

12
13 Disconnection of utility service is a drastic and heavily regulated action because it
14 results in life-changing consequences to consumers. New Jersey's decision to
15 institute a competitive generation market makes important distinctions between
16 utilities and competitive suppliers. The authorization to completely terminate
17 utility service is accorded to the monopoly utility, not competitive suppliers. In
18 2004, the BPU approved a Third Party Supplier Agreement that prohibits a TPS
19 from physically terminating service to customers.³ The TPS can terminate the

³ Third Party Supplier Agreement, approved by I/M/O Approval of Amendments to the Creditworthiness Requirements in the Third Party Supplier Agreement, BPU Docket No. EX03030185 (Order dated 12/22/04) as referenced in Comments of the Department of Public Advocate, Division of Rate Counsel, re: proposed Energy Competition Standards (39 N.J.R. 1405(a), April 16, 2007), p.10.

1 contract with the customer, after notice. The customer can then choose another
2 supplier or receive default service from the utility.⁴

3

4 On October 1, 2007, the BPU proposed re-adoption with amendments of some of
5 its rules, including the utility service discontinuance rules.⁵ The Board describes
6 these amendments as ones that clarify but do not change the meaning of the
7 existing rule. The existing rule at N.J.A.C.14:3-3.6(a)(3)(i) prohibits service
8 discontinuance for nonpayment of “repair charges, merchandise charges,
9 installation of conservation measures and other non-tariff contracted service
10 charges between the customer and the utility.” The proposed rule continues these
11 prohibitions and adds the following at N.J.A.C. 14:3-3A.2(b): “A utility may
12 discontinue service for nonpayment only of charges for the actual commodity
13 itself, that is, for electricity, gas, water, wastewater service, or telephone service.
14 A utility shall not discontinue service for nonpayment of charges for optional
15 services...”

16

17 PSE&G’s practice of assuming the TPS’s receivables, commingling the funds,
18 billing for the TPS’s charges, and disconnecting for nonpayment is inconsistent
19 with the existing and proposed rules that seek to limit the nonpayment
20 circumstances in which discontinuance is permitted. The BPU otherwise
21 prohibits utility service discontinuance for nonpayment of TPS charges. Since
22 these charges would otherwise not result in service discontinuance under the

⁴ 39 N.J.R.1405(a), proposed N.J.A.C. 14:4-7.10.

⁵ 39 N.J.R. 4077(b), October 1, 2007.

1 rules, PSE&G's practice of discontinuing service by assuming TPS receivables
2 circumvents the rules. Does PSE&G believe it can assume the receivables and
3 bill for any service at all, say Capital One credit card charges, and disconnect
4 utility service for nonpayment unless the rules explicitly prohibit it?

5

6 I am also concerned that the TPS and utility distribution charges are separate on
7 the PSE&G bill and that the customer is unaware they will be treated the same for
8 collection and service disconnection. If so, the BPU needs to address this issue as
9 well.

10

11 **Q. Does that conclude your surrebuttal testimony?**

12 A. Yes, it does.