Agenda Date: 8/18/04
Agenda Item: 2C

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

DIVISION OF ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR ITS 2003/2004 ANNUAL REVIEW AND APPROVAL OF ITS BASIC GAS SUPPLY SERVICE (BGSS), AND CHANGES IN ITS GAS TARIFF PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A 48:2-21.1	)	ORDER ADOPTING INITIAL DECISION IN PART AND MODIFYING INITIAL DECISION IN PART DOCKET NO. GR03050400

(SERVICE LIST ATTACHED)

BY THE BOARD:

PROCEDURAL HISTORY

Effective May 1, 2002, in accordance with the Board's April 17, 2002 Order, In the Matter of the Petition of Public Service Electric and Gas Company's Proposal to Transfer Its Rights and Obligations Under Its Gas Supply and Capacity Contracts and Operating Agreements to an Unregulated Affiliate and Other Relief, Docket No. GM00080564 (Gas Contracts Transfer Case), Public Service Electric and Gas Company (PSE&G or Company), transferred its rights and obligations under its supply and capacity contracts and operating agreements to an unregulated affiliate, Energy Resources & Trade (ERT).

In Docket No. GR02090702, I/M/O Public Service Electric and Gas Company's Proposal for an Increase in its Residential BGSS Commodity Charges (formerly LGAC) and for Changes in the Gas Tariff Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2.21.1 by Order dated June 20, 2003, the Board set new 2002/2003 BGSS rates for PSE&G, and directed that three outstanding issues be incorporated into the Company's 2003/2004 Annual BGSS filing, specifically:

1. A review and determination of the appropriate method of allocation of interstate pipeline refunds received by the Company since May of 2002;
2. A review of the Company's hedging program guidelines, including the levels of discretionary and non-discretionary price hedging for both peak and non-peak periods for the 2001-2003 period and prospectively. The parties to this settlement agreed that

the Company will, and the other parties may, address such guidelines and propose any modifications in the Company's current hedging program; and

3. A review and determination as to the appropriate allocation of the Company's gas costs and associated credits between its periodic and monthly market indexed supply portfolios.

On May 30, 2003, in Docket No. GR03050400, PSE&G petitioned the Board for an increase in the level of the Company's 2003/2004 Residential Default Commodity Service (BGSS-RSG) rate from 71.8545 cents per therm [including sales and use tax (SUT)] to 79.6357 cents per therm (including SUT), and its Residential Multiple Family Default Commodity Service (BGSS-RSGM) rate from 68.1445 cents per therm (including SUT) to 75.9257 cents per therm (including SUT) to be effective October 1, 2003. The Company's proposal would result in additional annual revenues of $102 million or an average increase for the class average gas residential heating customer of 7.2 percent.

On June 16, 2003, Docket No. GR03050400 was transmitted to the Office of Administrative Law (OAL) and the matter was subsequently assigned to Administrative Law Judge (ALJ) Richard McGill. ALJ McGill presided over a pre-hearing conference on July 10, 2003.

On July 16, 2003 the Company filed with the Board a Motion for Interim Relief requesting permission to implement its proposal on an interim basis effective for service rendered on and after September 1, 2003.

Public hearings occurred in New Brunswick, Hackensack and Mt. Holly on August 11, 12 and 14, 2003 respectively.

Representatives of the Company, Board Staff and the Division of the Ratepayer Advocate (Advocate), met to discuss the matters at issue. Subsequently, on August 15, 2003, the Company, Board Staff and the Advocate entered into a stipulation in Docket No. GR03050400 (August 15, 2003 Stipulation) whereby the Parties agreed that provisional rates subject to refund with interest, were warranted to mitigate the development of additional gas cost under-recoveries. The Parties also agreed that they shall not be deemed to have agreed to any methodology or principle underlying any of the terms of the stipulation and that the filing would continue on schedule at the OAL thereby giving the Parties an opportunity for full review of the case at the OAL.

On August 19, 2003, the Board approved the August 15, 2003 Stipulation in Docket No. GR03050400, which recommended a provisional increase, in the 2003/2004 Annual Commodity Charge rates charged by the Company for its Residential Default Commodity Service (BGSS-RSG) from 71.8545 cents per therm (including SUT) to 79.6357 cents per therm (including SUT), and its Residential Multiple Family Default Commodity Service (BGSS-RSGM) from 68.1445 cents per therm (including SUT) to 75.9257 cents per therm (including SUT) as of September 1, 2003. The provisional rates were subject to refund with interest. The Board also directed that the case remain at the OAL for full review.

A Motion for Intervention was granted to the Township of Maplewood.

An evidentiary hearing occurred on October 8, 2003 at which time the Company, Board Staff and the Division of the Ratepayer Advocate litigated two issues and witnesses for the Company and the Advocate agreed to three items on the record.

JANUARY 27, 2004 PARTIAL SETTLEMENT

Subsequent to the October 8, 2003 evidentiary hearing, representatives of the Company, Board Staff and the Division of the Ratepayer Advocate (Advocate), collectively the Parties, met to discuss the matters at issue. As a result of those discussions, a partial Settlement (Partial Settlement) was reached and executed on January 27, 2004. In the Partial Settlement, the Parties agreed to the following:

1. The Parties took no issue with the Company's method of allocating gas costs and associated credits between its Residential, and Commercial and Industrial (C&I) customers through September 30, 2003, and agreed that future allocations and the allocation method, for the period beginning October 1, 2003, would be subject to appropriate review in future BGSS commodity charge proceedings. The Company further agreed to provide the Board and the Advocate with a detailed, written description of the methods used to allocate gas costs and credits between its Residential and C&I customers no later than April 1, 2004.

2. The Parties agreed that the Company's June 1, 2001 Hedging Program filed with the Board would be modified. Specifically, beginning with the 2003 heating season, at least 30% [34.5 billion cubic feet (Bcf)] of the total maximum annual volume (115 Bcf) would be hedged on a non-discretionary, dollar cost averaging basis prior to each November through October period. In addition, the Company would use its discretion to hedge additional volumes up to the annual maximum of 115 Bcf. The Company would continue to file quarterly reports with the Board and Advocate detailing its currently hedged positions.

3. The Parties reconfirmed that the implementation of monthly market indexed Rate Schedule Market Price Gas Service (MPGS) pricing for Residential gas customers would be preceded by a Company filing, a full review, including hearings as required, and Board approval pursuant to a written Order.

4. The Parties agreed that the Company's Residential Default Commodity Service BGSS-RSG rate of 79.6357 cents per therm (including SUT), and its Residential Multiple Family Default Commodity Service Rate of 75.9257 cents per therm (including SUT), approved on a provisional basis on August 19, 2003, should become final.

The parties were unable to reach agreement on the appropriateness of conducting a reconciliation with respect to interstate pipeline refunds of $4,097,188 allocated to C&I customers and a C&I over-recovery balance of $3,093,000 related to gas service for C&I customers during the period before the May 1, 2002 effective date of the Company's gas contracts transfer. As a result, a hearing was held before ALJ McGill on October 8, 2003 on these issues.

Prior to May 1, 2002, gas costs for C&I and Residential customers were subject to deferred accounting and reconciliation. The Board's April 17, 2002 Order in the Gas Contracts Transfer Case stated that service to PSE&G's residential customers would not be priced under PSE&G's proposed Market Price Gas Service prior to April 1, 2004 and approved MPGS for C&I customers. This Order effectively directed that BGSS for residential customers remain subject to deferred accounting and reconciliation. At issue here is the difference in costs and revenues for the C&I customers that were created between the date of the Board's oral ruling on January 9, 2002 and the May 1, 2002 effective date of the tariff sheets.

ERT received refunds from interstate pipelines. PSE&G allocated most of the refunds to residential customers while approximately $6.3 million was allocated to C&I customers. Approximately $4.1 million was allocated to C&I customers for the period before May 1, 2002 and approximately $2.2 million to the period after May 1, 2002. The Advocate argued that pipeline refunds and over-recovered gas costs of $4.1 million and $3.1 million, respectively, should be credited to C&I customers, as these amounts pertained to supply transactions that occurred prior to May 1, 2002, the effective date of the contract transfer to ERT. The Board's April 17, 2002 Order in the Gas Contracts Transfer Case did not address how refunds and reconciliations should be handled.

The Parties filed initial and reply briefs on January 16, 2004 and February 13, 2004, respectively.

- The Advocate maintained that the pipeline refunds of $4,097,188 allocated to C&I customers for service before the May 1, 2002 effective date of the gas contracts transfer should be credited to ratepayers with interest. The Advocate also argued that PSE&G should return to C&I BGSS customers the $3,093,000 deferred over-recovery balance that existed as of May 1, 2002 with interest. The Advocate stated that absent a specific ruling by the Board changing the status quo, the amounts should be subject to reconciliation and, therefore, credited to C&I customers.

- The Company countered, arguing that ERT assumed all C&I customer risk on and after the May 1, 2002 transfer date. All parties involved with the transfer case proceedings were aware that, upon BPU approval, ERT assumed all the risks with no provision for a true-up in either direction. The Company argued that if the Board had intended a one way exception for pipeline refunds, the Board would have stated its intent in the April 17, 2002 Order. The Company also argued that the Advocate's recommendations should be rejected as being without merit and rejected under the law and the Board's policy. The Company argued that crediting the C&I customers with the pipeline refund and over-recovery would "contravene the spirit and intent" of the April 17, 2002 Order.

- The Company cites four Board cases (Docket Nos. GX99030121 and GO99030124; ER91111698J; EO97080461, EO97070462 and EO97070463; and EO97070461, EO97070462 and EO97070463), which allegedly show the Board's "policy on respecting the provisions of its Board-approved Stipulations and contracts during their unexpired terms."

- The Company noted that in a matter pertaining to I/M/O Public Service's Unbundling, Stranded Costs, and Restructuring Filings (Docket Nos. EO97070461, EO97070462 and EO97070463) Co-Steel, an intervener, argued that the provisions of the Federal and State Constitutions against state impairment of contracts precluded the Board from taking regulatory action affecting its contracts. Co-Steel did argue during that case that the Board Order that imposed stranded cost charges on customers impaired its contracts.

- Staff supported the Advocate's positions and arguments. In addition, Staff found the issues similar to the treatment of the Company's transfer of its electric generation assets and liabilities to an unregulated affiliate under the Electric Discount and Energy Competition Act (EDECA). In I/M/O Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings Docket Nos. EO97070461, EO97070462, and EO97070463, Final Decision and Order dated August 24, 1999

(Restructuring Order) the Board approved a stipulation which provided for a final true-up through August 1, 1999. Staff would apply a similar approach with respect to this unresolved ERT issue and require a final true-up through May 1, 2002.

- Staff also argued that the Stipulation of Settlement does not include any provision that allows the Company to take the extraordinary step of crediting ERT with refunds and over-recoveries, no matter their origin. Therefore, there is no contract provision to respect.

- Staff noted that Co-Steel lost its argument on appeal in I/M/O PSE&G Rate Unbundling, 330 N.J. Super. 65 (App. Div. 2000), aff'd, 167 N.J. 377 (2001). Similarly, the Company does not have a successful impairment position. The Company has no contract provision to impair.

INITIAL DECISION

In his Initial Decision of April 6, 2004, regarding the pipeline refund issues, ALJ McGill supported the Company's position, citing from page twelve of the Board's April 17, 2002 Order, In the Matter of the Petition of Public Service Electric and Gas Company's Proposal to Transfer Its Rights and Obligations Under Its Gas Supply and Capacity Contracts and Operating Agreements to an Unregulated Affiliate and Other Relief, Docket No. GM00080564: "Under the Settlement Proposal, Newco [ERT] and suppliers are both at risk for the recovery of the fixed cost obligations under the pipeline contracts held to service their customers. This is true for Newco since there will no longer be a straight pass through via an LGAC-type (Levelized Gas Adjustment Clause) mechanism for C&I customer classes." As the Board did not expressly require a final true-up in the Gas Contracts Transfer Case Order, the indication is that the Board did not intend this type of reconciliation for C&I customers.

On the over-recovery issue, the Judge sided with the Company, indicating that PSE&G had no control over the time between the Board's January 9, 2002 agenda meeting at which the oral ruling was made, and the April 17, 2002 issuance of the signed Order. Had the transfer been affected as of February 1, or March 1, 2002, ERT would have been required to absorb an under-recovery.

The ALJ reasons that because the Board provided for a final true-up in I/M/O Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings, BPU Docket No.'s EO97070461, EO97070462, EO97070463, Final Decision and Order dated August 24, 1999 (Restructuring Order) related to PSE&G's Levelized Energy Adjustment Clause (LEACs), its failure to expressly provide for a final true-up in PSE&G's Transfer Order indicates that the Board did not intend there be a final reconciliation for the Company's C&I gas customers. The dispute among the parties in the proceeding to transfer PSE&G's electric assets revolved around the final true-up of its LEAC. The LEAC is similar to the LGAC, in that it is a deferred accounting method used to reconcile the cost of energy versus the amount of energy charged to a customer during a specified period of time.

Judge McGill concluded that:

1. The proposal to return pipeline refunds from September and November 2002 and the deferred cost balance as of May 1, 2002 to C&I customers should not be approved;

2. The parties have voluntarily agreed to the Partial Settlement;

3. The Partial Settlement fully disposes of all remaining issues in the controversy, is consistent with the law, and should be approved.

The Advocate and Staff filed exceptions to ALJ McGill's Initial Decision with the Board on April 20, 2004, and May 4, 2004, respectively. Reply exceptions to the Advocate's and Staff's exceptions were filed by PSE&G on April 26, 2004, and May 11, 2004, respectively.

On April 20, 2004 the Advocate filed exceptions to the portion of the ALJ's Initial Decision denying refunds to C&I BGSS customers. The Advocate did not take exception to the section of the Initial Decision that approved the Partial Settlement. The Advocate stated that 1) the refunds PSE&G received for overcharges from interstate pipeline companies that the Company used to provide service to C&I BGSS customers prior to the May 1, 2002 transfer of PSE&G's gas supply contracts to ERT, its unregulated affiliate and 2) the deferred over-recovery balance that the Company owed for overcharges that PSE&G charged to C&I BGSS customers prior to the May 1, 2002, transfer to ERT should be returned to C&I customers.

The Advocate maintained that both of these amounts should be rightfully returned to C&I BGSS customers because they result from rates that C&I BGSS customers paid that were subsequently determined to be too high for the service received and because these amounts relate solely to service received by C&I BGSS customers before May 1, 2002. The Advocate also suggested that PSE&G's position is erroneous because service changes could not affect the ratemaking treatment for gas supply service prior to the Board mandated May 1, 2002, effective date, it could only affect service received and paid for after the transfer. The fact that some of the refunds were not received prior to the May 1, 2002 contract transfer does not discount the fact that the overcharges result from service received prior to May 1, 2002 when C&I gas costs were reconcilable. The timing of the receipt of the refund does not change the equity of the matter. The refund to customers should be made via a bill credit or other mechanism and should include interest from the day the Company received the refund. The Advocate also requested that the Board require PSE&G to present an interest calculation for review by the parties and the Board and to include that interest in the amount to be refunded.

The Advocate asserted that PSE&G belatedly cited an October 7, 2003 Order by the Federal Energy Regulatory Commission addressing pipeline rates and an invoice from one of the Company's pipeline suppliers imposing a surcharge for service rendered from April 1, 2002 to March 31, 2003. The Advocate is of the opinion that PSE&G's willingness to forego requesting two months worth of recovery of this surcharge is a small concession on the Company's part and that it willfully chose to withhold this information until its reply brief. The Advocate suggested that if the Board decides that the pipeline surcharge should be recognized the refunds to C&I customers should be reduced by $235,000.

The Advocate believes that the ALJ mistakenly arrived at the conclusion that the "equities of the situation also favor PSE&G." The Advocate notes that ALJ McGill believes that the uncertainty of whether pipeline rates would subsequently result in surcharges or refunds for service prior to the effective date of Board's Order in the Gas Contracts Transfer Case was a burden that the April 17, 2002 Order placed on ERT for service that occurred before ERT started to serve C&I customers. The Advocate also draws attention to the fact that the requirement is not set forth in the Order upon which the ALJ relies. Lastly, the Advocate opines that the Board should decide the issue once and for all by adopting the Advocate's position.

Staff did not take exception to the ALJ's adoption of the Partial Settlement but strongly argued against the Board adopting that portion of the Initial Decision which fails to return the pipeline refunds and over-recovery in the deferred cost balance to the Company's C&I customers.

Staff continued to assert that the language in the Gas Contracts Transfer Case does not "clearly indicate" that the Board did not intend to have a final true-up. The Stipulation in the Gas Contracts Transfer Case states that "The Affiliate shall be at risk for recovery of costs related to, and shall retain the revenues derived from, that portion of the contracts listed on Schedule 1, that is utilized to serve industrial customers upon commencement of sales under MPGS." Staff contends that while the Board's Order may not have specifically espoused a final true-up mechanism, this provision of the contract demonstrates the Board's intent to reconcile refunds or deferred balances related to periods before the commencement of sales under MPGS.

Staff also drew attention to the fact that the Restructuring Order required that the actual balance of PSE&G's LEAC account for the period prior to the August 1, 1999 date be subject to true-up. Therefore, the actual over-recovery of gas costs collected for the period prior to the transfer and implementation of PSE&G's new MPGS pricing structure should be refunded for the benefit of the C&I customers of PSE&G. Even though the Stipulation did not contain express written direction on this issue the Parties and the Board should not overlook past Board policy. Staff also refuted the ALJ's conclusion that the equities lie with PSE&G. The ALJ's position overlooks the inequity that would occur were this Board to adopt his findings - PSE&G will have over-collected funds from ratepayers.

In reply to the Advocate's exceptions to the ALJ's Initial Decision, the Company asserted that the Advocate did not raise any new arguments and instead expressed dissatisfaction with the ALJ's ruling, without offering any legitimate grounds for overturning the Initial Decision. PSE&G is satisfied that the ALJ identified a solid basis in the Board approved Gas Contract Transfer Order to support PSE&G's opposition to the positions set forth by the Advocate. The Company also states that EDECA established new rules for the post May 1, 2002 period, thereby placing ERT on the same competitive basis as the third party suppliers who compete to supply service to the Company's C&I customers. Post May 1, 2002, ERT received all of the risks regarding C&I customers and also receives all of the revenues from C&I customers. PSE&G believes that this is equally true of the prior period adjustments. The Company did note that if the Board chose to refund money to ratepayers that the refund should occur over a two year amortization period.

The Company also contended that Staff's reliance on the Board's August 24, 1999 restructuring Order does not support a different conclusion.

Subsequent to the issuance of the Initial Decision in this matter, the Board requested and was granted two 45-day extensions from the OAL. During that time period, the Company, the Ratepayer Advocate and Staff continued to negotiate with respect to the issues in dispute. On August 17, 2004 the parties reached a settlement resolving the remaining issues.

AUGUST 17, 2004 STIPULATION

The Company, Staff and the Ratepayer Advocate agreed that PSE&G will credit a total of $6.4 million to General Service Gas, Large Volume Service and Street Lighting Service customers in the month after the effective date of the Board Order in this docket. In September 2004, the credit would amount to $0.322564 cents per therm. The Company shall provide a report of the actual credited amount and the parties shall meet to discuss the treatment of any difference.

DISCUSSION AND FINDINGS

Through the Electric Discount and Energy Competition Act, the Board was assigned the task of determining whether Basic Gas Supply Service should be made available on a competitive basis in the gas industry. Accordingly, on January 6, 2003, the Board adopted the BGSS Price Structure Proposal agreed to and collectively submitted by Staff, the RPA and the four Gas Distribution Companies (GDCs). I/M/O the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A 48:3-49 et seq., Docket No. GX01050304, dated January 6, 2003. The agreement and Order provided that customers in New Jersey would be subject to either a monthly BGSS price structure or a periodic BGSS price structure. Generally speaking, however, the C&I customers would be monthly, while the smaller customers would be subject to a periodic structure.

Unlike the other GDCs, the Board approved a monthly pricing structure for PSE&G's C&I customers prior to issuing the January 6, 2003 Order. I/M/O the Petition of Public Service Electric and Gas Company's Proposal to Transfer its Rights and Obligations Under its Gas Supply and Capacity Contracts and Operating Agreements to an Unregulated Affiliate and Other Relief, BPU Docket No. GM00080564, Order dated April 17, 2002 (Transfer Order). Specifically, the Board approved a stipulation (Stipulation) wherein PSE&G transferred its rights and obligations under its gas supply and capacity contracts and operating agreements to an unregulated affiliate. Id. The Transfer Order additionally provided that PSE&G's C&I customers would be switched to a Market Price Gas Service rate schedule upon the effective date of the contract transfer to the unregulated affiliate.

The Board has reviewed the record in this proceeding, including the Initial Decision and the two Settlements. Accordingly, the Board HEREBY ADOPTS the ALJ's recommendation to adopt the Partial Settlement executed on January 27, 2004. Noting that the Company, the Ratepayer Advocate and Staff entered into an additional settlement subsequent to the issuance of the ALJ's Initial Decision, the Board HEREBY MODIFIES that portion of the ALJ's Initial Decision that allows the Company to retain 1) the interstate pipeline refunds allocated to C&I customers for the period prior to May 1, 2002 and 2) the C&I deferral balance as of May 1, 2002, and HEREBY APPROVES the Settlements entered into by the Parties on January 27, 2004 and August 17, 2004 which resolves all issues that relate to those matters. Accordingly, the Board HEREBY ADOPTS the terms of the Settlements as if fully set forth herein. The Board HEREBY ORDERS the return, through a one time bill credit, of $6.4 million to C&I BGSS customers the month after the effective date of the present Order in this docket.

The Company's gas costs will remain subject to audit by the Board of Public Utilities.

This Decision and Order shall not preclude nor prohibit the Board from taking any such actions deemed to be appropriate as a result of any such audit.

DATED: 8/19/04

BOARD OF PUBLIC UTILITIES
BY:

JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

CAROL J. MURPHY
COMMISSIONER

CONNIE O. HUGHES
COMMISSIONER

JACK ALTER
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION OF PUBLIC
SERVICE ELECTRIC & GAS COMPANY FOR ITS
2003/2004 BGSS COMMODITY CHARGE
BPU DOCKET NO. GR03050400
SERVICE LIST

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S 2003/2004 ANNUAL BGSS COMMODITY CHARGE FILING FOR ITS RESIDENTIAL GAS CUSTOMERS UNDER ITS PERIODIC PRICING MECHANISM AND FOR CHANGES IN THE GAS TARIFF PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A. 48:2-21.1)	)	PARTIAL SETTLEMENT BPU DOCKET NO. GR03050400 OAL DOCKET NO. PUC 5642-03

On June 20, 2003, the New Jersey Board of Public Utilities (the Board) in Public Service Electric and Gas Company's (Public Service, the Company) 2002/2003 BGSS Commodity Charges proceeding under Docket No. GR02090702 issued its Order Adopting Settlement closing that proceeding and reserving for the Company's 2003/2004 Annual BGSS Commodity Charges proceeding the following three issues:

a) The appropriate allocation of interstate pipeline refunds received by the Company since May of 2002;

b) The Company's hedging program guidelines, including the levels of discretionary and non-discretionary price hedging for both peak and non-peak periods for the 2001/2003 period and prospectively; and

c) The appropriations of Company's allocation of gas costs and associated credits between its periodic and monthly gas supply portfolios.

On May 30, 2003, Public Service filed a Motion and supporting testimony (Annual BGSS Commodity Charges filing) with the Board requesting that the Board permit Public Service to increase its Basic Gas Supply Service (BGSS) default Commodity Service to

Residential Service Gas (RSG) customers for service rendered on and after October 1, 2003. The proposed increase would result in additional annual revenues of approximately $102 million or an average increase of approximately 7.2% for the class average residential heating customer. The requested increase for BGSS-RSG Commodity Service is from the current 71.8545 cents per therm including New Jersey Sales and Use Tax (SUT) to 79.6357 cents per therm (including SUT) and the increase for BGSS-RSGM residential multiple family default Commodity Service is from 68.1445 cents per therm including (SUT) to 75.9257 cents per therm (including SUT).

On June 4, 2003 the matter was transmitted to the Office of Administrative Law (OAL) for hearings, and a pre-hearing conference was conducted on July 10, 2003.

In accordance with discussions at that pre-hearing conference, public hearings were scheduled and conducted after newspaper notice in New Brunswick, Hackensack and Mt. Holly on August 11, 12 and 14, 2003, respectively.

On July 16, 2003, Public Service filed with the Board a motion in the above-referenced matter for implementation on a provisional basis of its above-referenced May 30, 2003 BGSS Commodity Charges rate relief, effective September 1, 2003. On August 15, 2003, the parties executed and submitted a Provisional Settlement providing for the relief requested in the Company's July 16, 2003 motion.

On August 19, 2003, the Board issued its Decision and Order Approving Stipulation for Provisional Rates under the above-referenced docket numbers authorizing implementation effective September 1, 2003 of the Company's May 30, 2003 BGSS Commodity Charges rate request .

Representatives of Public Service, Board Staff and the Division of the Ratepayer Advocate (the Advocate, Ratepayer Advocate) (collectively the Parties) have met to discuss the matters at issue in these proceedings, including the above-mentioned three reserved issues included in the June 20, 2003 Order Adopting Settlement under Docket No. GR02090702.

At the October 8, 2003 hearing in the above-referenced proceeding, representatives of Public Service and the Ratepayer Advocate agreed on the record to paragraphs 1, 2 and 3 hereof. As a result of those discussions and the October 8, 2003 hearing, the Parties HEREBY AGREE AS FOLLOWS with regard to the specific issues described below:

1. The Parties agree that the Company's June 1, 2001 Hedging Program filed with the Board shall be modified. Specifically the Parties agree that, beginning with the 2003 heating season, at least 30% (34.5 Bcf) of the total maximum annual volume (115 Bcf) permitted to be hedged by the Board will be done on a non-discretionary, dollar cost averaging basis prior to each November through October period. In addition, the Company may use its discretion and operating judgment to hedge an additional volume of up to the annual maximum of 115 Bcf. The Company will continue to file quarterly reports with the Board and Ratepayer Advocate detailing its current hedge positions.

2. The Parties without prejudice to their respective positions in future proceedings as to post- September 30, 2003 periods take no issue with the Company's

method of allocation of gas costs and associated credits between its residential and C&I customers through September 30, 2003 and agree that future allocations and the allocation method beginning on October 1, 2003 will be subject to review in future Annual BGSS Commodity Charges proceedings as to their appropriateness. Public Service agrees to provide a detailed written description of the method of the allocation of gas costs and credits between its residential and C&I customers to the Board and to the Ratepayer Advocate as soon as the same is readily available but no later than April 1, 2004.

3. The Parties also reconfirm that pursuant to the Board-approved Gas Contract Transfer Settlement, Docket No. GM000564, implementation of monthly Rate Schedule MPGS pricing for residential gas customers shall be preceded by a Company filing and a review, including hearings as required, and Board approval pursuant to a written Order.

4. The Parties also agree that upon written Board approval of this Partial Settlement resolving the items described in paragraphs 1, 2 & 3 supra, the Company's residential default Commodity Service BGSS-RSG rate of 79.6357 cents per therm (including SUT) previously approved on a provisional basis, and the Company's BGSS-RSGM residential multiple family default Commodity Service rate of 75.9257 cents per therm (including SUT) approved on a provisional basis shall become final.

5. The undersigned agree that this Partial Settlement contains mutually balancing and interdependent provisions and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Partial Settlement is not accepted and approved by the Board, this Settlement shall be null and void, and the parties shall be placed in the same position that they were in immediately prior to its execution.

6. The undersigned parties further hereby agree that this Partial Settlement has been made exclusively for the purpose of this proceeding and that this Stipulation, in total or specific item, is in no way binding upon them in any other proceeding, except to enforce the terms of this Partial Stipulation.

Public Service Electric and Gas Company

BY: _____
Roger L. Camacho

DATED: January 9, 2004

Seema M. Singh, Esq., Ratepayer Advocate

BY: _____ / ETF
Badrhn M. Ubushin, DRA

DATED: January 27, 2004

PETER C. HARVEY, ATTORNEY GENERAL
OF THE STATE OF NEW JERSEY
Attorney for Board's Staff

BY: _____
Rebecca Hobbs, DAG

DATED: January 27, 2004

TOWNSHIP OF MAPLEWOOD

BY: _____
Drew J. Bauman, Esq.
Mc Donough, Bauman, Teehan,
Flanagan & Kay

DATED: _____

RECEIVED
APR 12 2004
DIVISION OF THE
RATEPAYER ADVOCATE

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

33 Washington Street
Newark, NJ 07102
(973) 648-7248

A copy of the administrative law judge's decision is enclosed.

This decision was mailed to the parties on APR 07 2004

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. PUC 5642-03
BPU DKT. NO. GR03050400

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S 2003/2004 ANNUAL BGSS COMMODITY CHARGE FILING FOR ITS RESIDENTIAL GAS CUSTOMERS UNDER ITS PERIODIC PRICING MECHANISM AND FOR CHANGES IN THE TARIFF FOR GAS SERVICE, B.P.U. N.J. NO. 13 GAS, PURSUANT TO *N.J.S.A.* 48:2-21 AND *N.J.S.A.* 48:2-21.1.

Roger L. Camacho, Assistant Corporate Rate Counsel, for Public Service Electric and Gas Company

Badrhn M. Ubushin, Deputy Ratepayer Advocate, and **Felicia Thomas-Friel**, Deputy Ratepayer Advocate, for the Division of Ratepayer Advocate (Seema L. Singh, Ratepayer Advocate, attorney)

Margaret Comes, Deputy Attorney General, and **Rebecca L. Hobbs**, Deputy Attorney General, for the Staff of the Board of Public Utilities (Peter C. Harvey, Attorney General of New Jersey, attorney)

Patrick J. McDonough, Esq., for the Township of Maplewood (McDonough, Bauman, Teehan & Flanagan, attorneys)

Record Closed: March 30, 2004 Decided: April 6, 2004

Before **RICHARD McGILL**, ALJ:

On May 30, 2003, Public Service Electric and Gas Company ("Company") filed a motion with the Board of Public Utilities ("Board") seeking approval to increase the level of its 2003/2004 annual Basic Gas Supply Service ("BGSS") commodity charge for residential gas customers under its periodic pricing mechanism and for changes in its gas tariff pursuant to *N.J.S.A.* 48:2-21 and *N.J.S.A.* 48:2-21.1. Specifically, the Company requested an increase in its rate for BGSS default commodity service for residential gas service ("BGSS-RSG") from 71.8545 cents per therm including New Jersey Sales and Use Tax ("SUT") to 79.6357 cents per therm. The Company also requested an increase in its rate for BGSS default commodity service for residential multiple family gas service ("BGSS-RSGM") from 68.1445 cents per therm including SUT to 75.9257 cents per therm. Both increases were to become effective for service rendered on and after October 1, 2003. The proposed increases would result in additional annual revenues of $102 million or an average increase of approximately 7.2 percent for the class average gas residential heating customer.

PROCEDURAL HISTORY AND ISSUES

The matter was transmitted to the Office of Administrative Law on June 16, 2003, for determination as a contested case. On July 16, 2003, the Company filed a motion for interim relief with the Board seeking approval to implement the proposed rate changes effective September 1, 2003, on a provisional basis. Public hearings were conducted in New Brunswick, Hackensack and Mt. Holly on August 11, 12, and 14, 2003, respectively.

On August 15, 2003, the Company, the Division of Ratepayer Advocate ("Ratepayer Advocate") and the Staff of the Board of Public Utilities ("Staff") executed and submitted a Provisional Settlement providing the relief requested in the Company's motion of July 16, 2003. On August 19, 2003, the Board issued a Decision and Order Approving Stipulation for Provisional Rates authorizing the implementation of the Company's proposed rate changes effective September 1, 2003.

A motion for intervention by the Township of Maplewood was granted by Order dated September 18, 2003. An evidentiary hearing was conducted on October 8, 2003, at the Office of Administrative Law in Newark, New Jersey. At the close of the hearing, a briefing schedule was established.

The issues related to the Company's filing were stated in the prehearing order as follows: (1) the reasonableness of the proposed rate changes; (2) a determination of the under/overrecovery from the prior period; and (3) an estimate of the gas costs for the annual period beginning October 1, 2003. In addition, three issues reserved from the Company's 2002/2003 BGSS filing were stated into the prehearing order as follows: (4) a review and determination of the appropriate allocation of interstate pipeline refunds received by the Company since May 2002; (5) a review of the Company's leasing program guidelines, including the levels of discretionary and non-discretionary price hedging for both peak and non-peak periods; and (6) a review and determination as to the appropriate allocation of the Company's gas costs and associated credits between its periodic and monthly supply portfolios.

The Company, Ratepayer Advocate and Staff entered into a Partial Settlement which resolves all issues related to the Company's BGSS-RSG and BGSS-RSGM rates. The Township of Maplewood did not take a position in regard to the Partial Settlement, which was filed on January 28, 2004. In addition to resolving the three issues reserved in the 2002/2003 BGSS filing, the Partial Settlement provided that the Company's residential default commodity service BGSS-RSG and BGSS-RSGM rates approved on a provisional basis shall become final.

At the hearing on October 8, 2003, the Ratepayer Advocate raised two additional issues related to the Company's commercial and industrial ("C&I") customers. One issue relates to refunds that the Company received from interstate pipeline companies for overcharges for gas used to serve C&I BGSS customers. The second issue concerns the deferred cost balance as of May 1, 2002, which is the effective date of a significant regulatory change discussed below. These issues are described collectively as "prior period adjustments."

FACTS

a. Regulatory Context

Prior to May 1, 2002, gas costs for residential and C&I customers were subject to deferred accounting treatment, reconciliation and adjustments for under/overrecoveries. Following an oral decision at an agenda meeting on January 9, 2002, the Board issued a written Order Approving Transfer of Contracts on April 17, 2002 in *In the Matter of the Petition of Public Service Electric and Gas Company's Proposal to Transfer Its Rights and Obligations Under Its Gas Supply and Capacity Contracts and Operating Agreements to an Unregulated Affiliate and Other Relief*, BPU Docket No. GM00080564 (Gas Contracts Transfer Case). The Order approved the transfer to an unregulated affiliate now known as Energy Resources and Trade ("ER&T") and directed the Company to file revised tariff sheets consistent with the changes approved therein. The revised tariff sheets became effective May 1, 2002.

In the Gas Contracts Transfer Case, the Company originally proposed to move its firm gas customers to market based pricing under its Market Price Gas Service ("MPGS") rate schedule and to eliminate use of deferred accounting and true-up provisions under its Commodity Service ("CS") rate schedules, the successor to the Levelized Gas Adjustment Clause ("LGAC"). In its April 17, 2002 Order, the Board approved a settlement which provided that service to residential customers would not be priced under rate schedule MPGS prior to April 1, 2004. As a result, BGSS for residential customers remained subject to deferred accounting and true-up for under/overrecoveries. However, the Board approved MPGS for C&I customers.

b. Interstate Pipeline Refunds

ER&T received refunds from interstate pipeline companies in September and November 2002. One refund was from Transcontinental Gas Pipe Line Company ("Transco") in the amount of $17,200,666. The other refund was from Texas Gas Transmission ("Texas Gas") in

the amount of $2,588,297. Of the total of $19,788,963, $13,456,642 was allocated to residential customers and was subject to deferred accounting and true-up provisions. The difference of $6,332,321 was for service rendered to C&I customers. This amount was allocated $4,097,188 to the period before May 1, 2002, and $2,235,133 to the period after May 1, 2002.

In January 2004, Transco advised the Company that there would be a fuel surcharge of $1,409,498 for the period from April 1999 through March 2003. The Company was given notice by Transco that it reserved the right to seek additional surcharges.

c. Deferred Cost Balance

The difference between costs and revenues for the C&I customers created monthly deferred balances. The monthly history of the C&I deferred balances for the period from the Board's agenda meeting on January 9, 2002, to the May 1, 2002 effective date of the tariff changes was as follows: ($9,619,000) for January 2002; ($4,831,000) for February 2002; $2,668,000 for March 2002; and $3,093,000 for April 2002.

PROPOSED REFUNDS

Ratepayer Advocate proposes the return of two amounts to the C&I customers. One amount relates to the refunds from interstate pipeline companies. According to Ratepayer Advocate, the portion of these refunds related to C&I customers for the period prior to May 1, 2002, amounting to $4,097,188, should be returned with interest. The second amount equalling $3,093,000 is the deferred cost balance as of May 1, 2002. Ratepayer Advocate proposes a refund of the combined total of $7,190,188 to C&I customers with interest. The refund would take the form of a bill credit or other rate mechanism.

In support of its position, Ratepayer Advocate argues that both the pipeline refunds and the deferred cost balance as of May 1, 2002, reflect the fact that the rates previously paid by C&I customers were too high. The rate mechanism that was in effect, at the time that the gas supply was used, would have required a return of the overcharges in a later period. Ratepayer Advocate

acknowledges that in accordance with the Board's Gas Contracts Transfer Case Order there will be no reconciliation for the period after the effective date of the new tariffs on May 1, 2002. However, the prior rate mechanism should apply to the period prior to May 1, 2002. In regard to the equities of situation, ER&T should not be allowed to retain refunds of overcharges paid by the C&I customers. Previously, the true-up would have included credits for pipelines company refunds received for prior periods.

Staff supports Ratepayer Advocate's position for essentially the same reasons. In addition, noting that no other gas distribution company is in a similar position, Staff finds an analogy in the treatment of the Company's transfer of its electric generation assets and liabilities to an unregulated affiliate. In *In the Matter of 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 dated August 24, 1999) ("Restructuring Order"), the Board considered a situation which was similar in that the Company had a Levelized Energy Adjustment Clause ("LEAC") which was a deferred accounting method used to true-up or reconcile the cost of energy compared to the amount charged to customers in a specified period. In that case, the Board approved a stipulation which provided for a final true-up through August 1, 1999. Staff would apply an analogous approach in this case and require a final true-up through May 1, 2002.

The Company relies on the Board's Order dated April 17, 2002, in the Gas Contracts Transfer Case to support its position that the amounts in question should not be returned to C&I customers. In accordance with this Order, all of the rights and obligations under the gas supply contracts and operating agreements were transferred to an affiliate (referred to as Newco in the Order which became ER&T), and the Company's C&I customers were transferred to Rate Schedule BGSS-F. Under the provisions of the April 17, 2002 Order, ER&T became responsible for all demand, capacity and storage costs for the C&I customers and was required to market gas to them at a rate between the floor and ceiling levels established in the BGSS-F rate schedule. The general purpose of the settlement approved by the Board was to create a competitive environment in which ER&T and third party suppliers of gas would be on a relatively equal

footing. ER&T was fully responsible for any difference between costs and revenues, and there was no provision for any future reconciliation.

As all parties recognize, the April 17, 2002 Order did not specifically address the question of prior period adjustments. However, the general approach reflected in the Gas Contracts Transfer Case Order supports the Company's position. On page 12 of the Order, the Board stated as follows:

> MPGS was intended to put the Company's sales service to C&I customers on the exact same footing as that of competitive suppliers. This element of the Settlement Proposal, namely, pricing customers in a comparable way as competitive suppliers, is the key to competition in the C&I customer classes. Under the Settlement Proposal, Newco and suppliers are both at risk for the recovery of the fixed cost obligations under the pipeline contracts held to service their customers. This is true for Newco since there will no longer be a straight cost pass through via an LGAC-type mechanism for C&I customer classes.

This language clearly indicates that there will be no further true-ups for C&I customers. Staff's reliance on the electric Restructuring Order dated August 24, 1999, does not support a different conclusion. The provision of a final true-up for the LEAC indicates that if the Board had intended this type of reconciliation for C&I gas customers, the Board would have stated that intention. The fact that the Board did not expressly require a final true-up in the Gas Contracts Transfer Case Order indicates that the Board did not intend this type of reconciliation for C&I customers.

Finally, the equities of the situation also favor the Company. With respect to the deferred cost balances as noted above, there were underrecoveries at the end of January and February 2002 and overrecoveries at the end of March and April 2002. If the changes had taken effect as of February 1 or March 1, 2002, instead of May 1, 2002, ER&T would have been required to absorb an underrecovery. Similarly with respect to pipeline refunds, there was no certainty as of May 1, 2002, as to future developments. There could have been refunds, surcharges or no change. Based upon the Gas Contracts Transfer Case Order, ER&T was required to take these risks. It would inequitable to require a reconciliation on the basis of knowledge gained with the

benefit of hindsight that a true-up would favor customers. Under the circumstances, I **CONCLUDE** that the proposal to return pipeline refunds from September and November 2002 and the deferred cost balance as of May 1, 2002, to C&I customers should not be approved.

The Partial Settlement is fully dispositive of all other issues in the case. Having reviewed the record and the settlement terms, I **FIND** as follows:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or the signatures of their representatives.

2. The Partial Settlement fully disposes of all remaining issues in controversy and is consistent with the law.

Therefore, I **CONCLUDE** that the agreement meets the requirements of *N.J.A.C.* 1:1-19.1 and that the settlement should be approved. Accordingly, it is **ORDERED** that the Partial Settlement is approved.

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

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES,** which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A.* 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Apr. 6, 2004
DATE

RICHARD McGILL, ALJ

E-mail Receipt of Initial Decision Confirmed by the Board of Public Utilities on:

4/6/04
DATE

Mailed to Parties:

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APR 07 2004
DATE

OFFICE OF ADMINISTRATIVE LAW

cml

APPENDIX

WITNESS LIST

For Public Service Electric and Gas Company:

John P. Scarlata

For Ratepayer Advocate:

Richard W. LeLash

EXHIBIT LIST

P-1	Motion dated May 30, 2003, with testimony of John P. Scarlata and tariff sheets	Evidence
P-2	Proof of Notice	Evidence
P-3	Responses to RAR-1 through RAR-36	Evidence
P-4	Schedule entitled "Refund Issue"	Evidence
P-5	Schedule entitled "RSG v. C&I Reconciliation"	Evidence
P-6	Prefiled rebuttal testimony of John P. Scarlata	Evidence
P-7	Schedule JPS-2 from Gas Contracts Transfer Case	Evidence
P-8	Schedule JPS-2 (Revised) from Gas Contracts Transfer Case	Evidence
RA-1	Prefiled direct testimony of Richard W. LeLash	Evidence

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S 2003/2004 ANNUAL BGSS COMMODITY CHARGE FILING FOR ITS RESIDENTIAL GAS CUSTOMERS UNDER ITS PERIODIC PRICING MECHANISM AND FOR CHANGES IN THE GAS TARIFF PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A. 48:2-21.1)	)	SETTLEMENT BPU DOCKET NO. GR03050400 OAL DOCKET NO. PUC 5642-03

On June 20, 2003, the New Jersey Board of Public Utilities (the Board) in Public Service Electric and Gas Company's (Public Service, the Company) 2002/2003 BGSS Commodity Charges proceeding under Docket No. GR02090702 issued its Order Adopting Settlement closing that proceeding and reserving for the Company's 2003/2004 Annual BGSS Commodity Charges proceeding the following three issues:

a) The appropriate allocation of interstate pipeline refunds received by the Company since May of 2002;

b) The Company's hedging program guidelines, including the levels of discretionary and non-discretionary price hedging for both peak and non-peak periods for the 2001/2003 period and prospectively; and

c) The appropriations of Company's allocation of gas costs and associated credits between its periodic and monthly gas supply portfolios.

On May 30, 2003, Public Service filed a Motion and supporting testimony (Annual BGSS Commodity Charges filing) with the Board requesting that the Board permit Public Service to increase its Basic Gas Supply Service (BGSS) default Commodity Service to Residential Service Gas (RSG) customers for service rendered on and after October 1, 2003. The proposed increase would result in additional annual revenues of approximately $102 million or an average increase of approximately 7.2% for the class average residential heating customer. The requested increase for BGSS-RSG Commodity Service is from the current 71.8545 cents per therm including New Jersey Sales and Use Tax (SUT) to 79.6357 cents per therm (including SUT) and the increase for BGSS-RSGM residential multiple family default Commodity Service is from 68.1445 cents per therm including (SUT) to 75.9257 cents per therm (including SUT).

On June 16, 2003 the matter was transmitted to the Office of Administrative Law (OAL) for hearings, and a pre-hearing conference was conducted on July 10, 2003.

In accordance with discussions at that pre-hearing conference, public hearings were scheduled and conducted after newspaper notice in New Brunswick, Hackensack and Mt. Holly on August 11, 12 and 14, 2003, respectively.

On July 16, 2003, Public Service filed with the Board a motion in the above-referenced matter for implementation on a provisional basis of its above-

referenced May 30, 2003 BGSS Commodity Charges rate relief, effective September 1, 2003.

On August 15, 2003, the parties executed and submitted a Provisional Settlement providing for the relief requested in the Company's July 16, 2003 motion.

On August 19, 2003, the Board issued its Decision and Order Approving Stipulation for Provisional Rates under the above-referenced docket numbers authorizing implementation effective September 1, 2003 of the Company's May 30, 2003 BGSS Commodity Charges rate request.

At the hearing on October 8, 2003, the Ratepayer Advocate raised two additional issues related to the Company's commercial and industrial (C&I) customers. One issue related to refunds that the Company received from interstate pipeline companies for overcharges for gas used to serve C&I BGSS customers, which was quantified at approximately $4.1 million. The second issue concerns the deferred cost balance as of May 1, 2002, which was quantified at approximately $3 million. These issues are described collectively as the "Prior Period Adjustments."

At the October 8, 2003 hearing in the above-referenced proceeding, representatives of Public Service and the Ratepayer Advocate agreed on the record to paragraphs a, b, c, and d below:

a. The Parties agreed that the Company's June 1, 2001 Hedging Program filed with the Board shall be modified. Specifically the Parties agree that, beginning with the 2003 heating season, at least 30% (34.5 Bcf) of the total maximum annual volume (115 Bcf) permitted to be hedged by the Board will be done on a non-discretionary, dollar cost averaging basis prior to each November through October period. In addition, the Company may use its discretion and operating judgment to hedge an additional volume of up to the annual maximum of 115 Bcf. The Company will continue to file quarterly reports with the Board and Ratepayer Advocate detailing its current hedge positions.

b. The Parties without prejudice to their respective positions in future proceedings as to post- September 30, 2003 periods take no issue with the Company's method of allocation of gas costs and associated credits between its residential and C&I customers through September 30, 2003 and agreed that future allocations and the allocation method beginning on October 1, 2003 will be subject to review in future Annual BGSS Commodity Charges proceedings as to their appropriateness. Public Service agreed to provide a detailed written description of the method of the allocation of gas costs and credits between its residential and C&I customers to the Board and to the Ratepayer Advocate as soon as the same is readily available but no later than April 1, 2004.

c. The Parties also reconfirm that pursuant to the Board-approved Gas Contract Transfer Settlement, Docket No. GM000564, implementation of monthly Rate Schedule MPGS pricing for residential gas customers shall be preceded by a Company filing and a review, including hearings as required, and Board approval pursuant to a written Order.

d. The Parties also agreed that upon written Board approval of the Partial Settlement resolving the items described in the above-discussed paragraphs a, b, and c, the Company's residential default Commodity Service BGSS-RSG rate of 79.6357 cents per therm (including SUT) previously approved on a provisional basis, and the Company's BGSS-RSGM residential multiple family default Commodity Service rate of 75.9257 cents per therm (including SUT) approved on a provisional basis shall become final.

On January 28, 2004, the parties submitted a Partial Settlement to Administrative Law Judge (ALJ) Richard McGill including paragraphs a, b, c, and d above.

The parties filed initial and reply briefs regarding the above-referenced prior period adjustments and recommending approval of the Partial Settlement.

On April 7, 2004, ALJ McGill issued his Initial Decision recommending that the Board approve the Partial Settlement and recommending with regard to the contested prior period adjustments that the proposals to return pipeline refunds from September and

November 2002 and the deferred cost balance as of May 1, 2002 to C&I customers should not be approved.

The parties filed exceptions and reply exceptions to ALJ McGills' above-referenced April 7, 2004 Initial Decision.

The parties met and conferred on the prior period adjustments discussed in ALJ McGills' Initial Decision. As the result of those meetings, the PARTIES HEREBY AGREE AS FOLLOWS:

1. The undersigned agree that the portion of the ALJ's April 7, 2004 Initial Decision in which he recommends approval of the above-referenced Partial Settlement should be adopted by the Board.

2. The undersigned further agree that to resolve on a final basis the Ratepayer Advocate's and Staff's above-referenced proposals to refund to C&I customers the impact of the Prior Period Adjustments, together with interest, Public Service shall credit $6.4 million to its C&I customers' bills for their gas commodity. This credit shall be included in the next subsequent monthly BGSS commodity rate filing after the effective date of the written Board Order approving this Settlement. If September 2004 is the next month after the effective date of the Board's written Order approving this Settlement, the Company's GSG, LVG and SLG customers will receive a credit of $0.322564 cents per therm (excluding SUT) for usage during that month.

The parties selected the month of September 2004 as the refund month as reasonably balancing the purposes of an expeditious return of the $6.4 million and of being a month in which the relative usage of the GSG, LVG and SL customers is expected to reasonably replicate the relative amounts of annual usage for those classes.

The Company will provide a report to the parties regarding the total dollars returned to customers as compared to the above-referenced $6.4 million. While the parties believe that any difference will be small, they agree to discuss the treatment of any such difference.

3. The parties also agree that the ALJ's April 7, 2004 Initial Decision in this proceeding should be approved as modified in this Settlement.

4. The undersigned agree that this Settlement contains mutually balancing and interdependent provisions and is intended to be accepted and approved in its entirety. In the event any particular aspect of this Partial Settlement is not accepted and approved by the Board, this Settlement shall be null and void, and the parties shall be placed in the same position that they were in immediately prior to its execution.

5. The undersigned parties further hereby agree that this Settlement has been made exclusively for the purpose of this proceeding and that this Stipulation, in total or specific item, is in no way binding upon them in any other proceeding, except to enforce the terms of this Settlement.

Public Service Electric and Gas Company

BY: Roger L. Camacho
Roger L. Camacho

DATED: 8/17/04

Seema M. Singh, Esq., Ratepayer Advocate

BY: Felicia Thomas-Friel
Felicia Thomas-Friel, DRA

DATED: 8/17/04

PETER C. HARVEY, ATTORNEY GENERAL
OF THE STATE OF NEW JERSEY
Attorney for Board's Staff

BY: Margaret Comes
Margaret Comes, DAG

DATED: 8/17/04

TOWNSHIP OF MAPLEWOOD

BY: _____
Paul E. Flanagan, Esq.
Mc Donough, Bauman, Teehan,
Flanagan & Kay

DATED: _____