



Agenda Date: 6/18/10
Agenda Item: 2E

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

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)	DECISION AND ORDER
SERVICE ELECTRIC AND GAS COMPANY FOR)	ADOPTING INITIAL
APPROVAL OF CHANGES IN ITS ELECTRIC AND)	DECISION
GAS SOCIETAL BEBEFITS CHARGE RATES;)	
FOR A CHANGE IN ITS ELECTRIC NON-UTILITY)	
GENERATION TRANSITION CHARGE RATE;)	
AND FOR CHANGES IN THE TARIFF FOR)	
ELECTRIC SERVICE B.P.U.N.J. NO.14 ELECTRIC)	
AND CHANGES IN THE TARIFF FOR GAS SERVICE)	
B.P.U.N.J. NO. 14 GAS)	DOCKET NO. ER09020113

(SERVICE LIST ATTACHED)

Gregory Eisenstark, Assistant General Corporate Rate Counsel, and,
Frances I. Sundheim, Esq., VP and Corporate Rate Counsel, attorneys for Petitioner

Diane Schulze, Assistant Deputy Public Advocate, for the Department of the Public Advocate,
Division of Rate Counsel (Stephanie A. Brand, Esq., Director)

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

BY THE BOARD:

The Electric Discount and Energy Competition Act ("EDECA"), codified as N.J.S.A. 48:3-49 et seq., was enacted on February 9, 1999. Among its purposes was to lower the high cost of energy and improve the quality and choices of service for all the State's consumers while affording fair treatment to all stakeholders during the transition from a regulated to a competitive power supply marketplace. EDECA established the framework for the deregulation and restructuring of the State's electric and natural gas utilities. The Board of Public Utilities ("BPU" or Board") was given broad authority and discretion to implement and oversee that transition.

Pursuant to EDECA, the Board established Public Service Electric and Gas Company's ("PSE&G or "Company") electric Societal Benefits Charge ("SBC") and Non-Utility Generation Charge ("NGC") in 1999, and the associated cost recovery mechanisms. PSE&G's gas SBC was established in August, 2000. The Board had required each electric and gas utility to file a

request for recovery of deferred expenses pertaining to un-recovered balances in the SBC, NGC, and Market Transition Charge and any transition period purchased power costs.

The Company's NGC rate is designed to recover the above-market costs of generation purchased by PSE&G from non-utility generators ("NUGs")¹. The SBC components addressed in this proceeding relate to the recovery of: 1) Energy Efficiency and Renewable Energy ("EE&RE") costs incurred in connection with electric and gas programs run by the Board's Office of Clean Energy, and 2) the value of electric customer receivables expected to be written-off as uncollectible by the Company.

Initial Filing

In its February 9, 2009 petition ("Initial Filing") in this docket, PSE&G asked the Board to find and determine that PSE&G's proposed SBC and NGC rates are just and reasonable. Based on actual and estimated data through June 30, 2010, PSE&G proposed to reduce annual electric revenues by \$18.860 million, while proposing to increase the gas EE&RE component to recover \$3.749 million in additional annual revenues. TABLE 1 below summarizes component amounts and rate changes:

TABLE 1		ELECTRIC [±]					GAS [±]
		SBC			Total	Total	Total
					Electric		GAS
		NGC	Bad Debts	EE&RE	SBC	[NGC/SBC]	[EE&RE]
02/09/09 Rates		0.2114	0.1141	0.2801			2.4742
Current Rates		0.2317	0.1198	0.2933			2.3483
Difference		(0.0203)	(0.0057)	(0.0132)			0.1259
KWH Output (000s)		48,111,318	48,111,318	48,111,318			
Therm Sales (000s)							2,978,061
PSE&G Revenue Change (\$000)		(\$9,767)	(\$2,742)	(\$6,351)	(\$9,093)	(\$18,860)	\$3,749

[±] Rates are ¢ per KWH [±] Rates are ¢ per therm

On May 26, 2009, the Board transmitted the matter to the Office of Administrative Law ("OAL") as a contested case. This docket was assigned to Administrative Law Judge ("ALJ") Irene Jones who conducted a pre-hearing conference on July 23, 2009 to establish the issues and set a procedural schedule. During that conference, the Company stated that it would file a supplemental, updated filing to reflect an increase in the NGC resulting from lower natural gas prices.

Supplemental Filing

On July 31, 2009, the Company filed its supplemental direct testimony ("Supplemental Filing") and revised schedules of Company witness Mr. Gerald W. Schirra, updating its Initial Filing, reflecting actual data through June 30, 2009 and projections through December 31, 2010.

¹ In the Matter of Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings, BPU Docket Nos. EO97070461, EO97070462, (Order dated August 24, 1999).

Mr. Schirra testified that the change in the rate impact of the NGC from a \$9.767 million decrease per the Initial Filing to an increase of \$121.092 million was attributable to the combined impact of:

- 1) declines in the market price at which capacity and energy are resold through the regional transmission organization, PJM,
- 2) a changed recovery period (through 12/31/10 v. 6/30/10), and
- 3) a revised kWh output forecast.

TABLE 2 summarizes the Company's updated NGC and SBC per the Supplemental Filing.

TABLE 2	ELECTRIC ⁺					GAS [±]
	SBC			Total	Total	Total
				Electric	Electric	GAS
	NGC	Bad Debts	EE&RE	SBC	[NGC/SBC]	[EE&RE]
07/31/09 Rates	0.4952	0.0849	0.2920			2.8520
Current Rates	0.2317	0.1198	0.2933			2.3483
Difference	0.2635	(0.0349)	(0.0013)			0.5037
KWH Output (000s)	45,955,224	45,955,224	45,955,224			
Therm Sales (000s)						3,012,368
PSE&G Revenue Change (\$000)	\$121,092	(\$16,038)	(\$597)	(\$16,635)	\$104,457	\$15,173

⁺ Rates are ¢ per KWH [±] Rates are ¢ per therm

Public hearings were held on November 9, 10, and 12 in Hackensack, New Brunswick, and Mt. Holly, respectively. The New Brunswick hearing was well attended with several individuals speaking against the proposed increase, including, in addition to residential customers, representatives of the Central New Jersey Workers Benefit Council, the Mercer County Workers Benefit Council, and the Communication Workers of America.

Subsequent to detailed discovery, BPU Staff and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") determined that they had no issues with the Company's proposed rates and revenue adjustments associated with the Company's electric and gas EE&RE programs.

On November 20, 2009, Rate Counsel filed the direct testimony of its witness Andrea Crane, who recommended that:

- 1) the Company's proposed NGC of \$121.1 million be reduced by the \$254,000 related to an allocated PJM pass-through to PSE&G for PSE&G's share of (non-commodity) default costs by two PJM members.
- 2) ratepayers not be required to pay interest on any bad debt-related under-recovery for September, 2007 (the first month of the current true-up period) through December,

2009, as the expense levels used to calculate the under-recovery were at the Company's discretion, and were excessive when compared to actual write-offs.

On December 1, 2009, the Company filed the Rebuttal Testimony of Gerald Schirra and Daniel Furlong, countering Rate Counsel's NGC/PJM and SBC/Bad Debt Expense positions. Mr. Schirra argued that the Company followed the Board-approved methodology for calculating its NGC costs, while Mr. Furlong argued that the Company's numbers reflected...."an established procedure for determining the bad debt accrual rate." *P-8 2-9 to 10*.

An evidentiary hearing was held on December 15, 2009 at the OAL, with Initial and Reply Briefs filed on January 11, 2010 and January 19, respectively.

THE DISPUTED ISSUES

The NGC Issue

Rate Counsel objected to the Company's attempt to pass on the PJM-allocated share (\$254,000) of default costs to ratepayers, arguing that the NGC is intended to allow the Company to recover the difference in the commodity price at which PSE&G must purchase generation from the non-utility generators ("NUGs") and the current market price of that power. According to Rate Counsel, the Company cannot tack-on additional charges to ratepayers for non-commodity costs, including default charges, as "these costs have nothing to do with the underlying NUG generation cost being recovered through the NGC." *RC-4 11-19 to 20*.

The Company argued that it has complied with all BPU orders regarding the purchase and sale of NUG power, and that the Company has followed the BPU-approved methodology for calculating its net NUG costs. The Company argued that the Board should reject Rate Counsel's recommendation to disallow the recovery of the \$254,000.

In its Initial Brief, BPU Staff agreed with Rate Counsel that the \$254,000 in PJM member defaults should be removed from the NGC, as ratepayers should not bear the burden of reimbursing the Company for unsupported, non-commodity costs. Through discovery, the Company acknowledged that... "[t]hese defaults were not directly related to NUG contracts between NUG generators and PSE&G". *RC-4 Appendix C*. The NGC was not intended to pass through additional costs to ratepayers that are not directly related to the difference between the prices at which PSE&G purchases generation from the NUGs and the market price of that power. Reinforcing the argument to disallow the recovery of the \$254,000, in oral testimony Company witness Schirra testified that he did not know how the PJM-allocated costs were determined.

T 16 9-14.

The Initial Decision

In her April 14, 2010 Initial Decision, Judge Jones found that the \$254,000 PJM-allocated cost had nothing to do with the provision of safe and reliable service, and that the Company failed to demonstrate that was just and reasonable and therefore recoverable. *I.D. at 8*.

Exceptions and Replies to Exceptions

On April 28, 2010, Rate Counsel and the Company filed Exceptions. Rate Counsel recommended that the Board adopt the Initial Decision and not allow PSE&G to pass these costs onto ratepayers." *RC Exceptions at 8*. Rate Counsel maintained that the Company had failed to provide specific reference to any statute or Board Order that expressly approved recovery of the PJM default charges or other charges tangentially related to the NUG contracts through the NGC. *Id.* In its May 5, 2010 reply exceptions, Rate Counsel reiterated its position that PSE&G failed to establish a legal basis for recovery of the member default charges through the NGC. The NGC allows the Company to seek recovery of the difference between the above market price paid for the energy under the NUG contracts and the actual market price. Board approval of language in the Company specific Addendum filed in the Basic Generation Service ("BGS") proceedings, does not support recovery of any costs through the NGC. *RC Reply at 9*.

PSE&G disagreed, arguing that, absent a finding that the Company has not been prudent with respect to the costs at issue, the Board should approve the pass-through of such costs in rates, and that there was no legal basis to disallow the PJM member default costs in the calculation of the net amount to be recovered through the NGC". *PSE&G Exceptions at 4*. In its Reply to Exceptions filed on May 5, 2010, the Company maintained that it had met its burden to show that the costs were incurred in connection with its sales of the NUG power into the PJM market for the benefit of ratepayers. Since the Company maintained the PJM account to sell the power as directed by Board Order, it is entitled to recover the difference between its payments to the NUGs and the revenues it receives from PJM, including any deduction from the amount received to cover the member defaults. *PSE&G Reply at 4*.

SBC - Bad Debt Expense / Interest Charge Issue

Under established accounting procedures, companies may maintain a bad debt reserve to account for possible uncollectible receivables. Additions to the reserve are "funded" through accounting entries. Then, as the Company actually writes-off bad debts (uncollectible customer receivables), it reduces the bad debt reserve. The use of a reserve is intended to permit a better matching of revenues with expenses associated with those revenues. Over time, the amounts expensed should closely match amounts written-off.

PSE&G's electric utility is permitted to collect its bad debt expense through the SBC. The Company collects interest from ratepayers on any under-recovery and credits interest to ratepayers if the Company is over-recovered. The determination of whether the ratepayer or the Company is due interest is based upon Company-controlled expense estimations, and not on the actual amount of lost revenues due to ratepayers failing to pay their utility bills.

On behalf of Rate Counsel, Ms. Crane's Direct Testimony argued that ratepayers should not be required to pay interest on any bad debt-related under-recovery for September, 2007 (the first month of the current true-up period) through December, 2009, as the expense levels used to derive the Company's 'under-recovered' position were at the Company's discretion, and were excessive compared to actual write-offs. *RC-4 13-1 to 18-16*. Rate Counsel's adjustment would result in a return to ratepayers of \$1.080 million. *RC-4 Schedule ACC-2*.

Prospectively, Rate Counsel also recommended that the Board take steps toward ensuring that bad debt expense recoveries are reasonable, by requiring the Company, in future SBC proceedings, to file a schedule comparing bad debt reserve additions to net write-offs for the period covered by the SBC and the prior two years, and provide testimony justifying any bad debt reserve additions that vary from net write-offs by more than 5%.

In the Company's Rebuttal, Mr. Furlong argued that the Company's numbers reflected...."an established procedure for determining the bad debt accrual rate..... based on the fact that it generally takes 6 or 7 months for an account to be written off," *P-8 2-9 to 11*. Mr Furlong acknowledged that the expense level "is dependent on forecasts [of future uncollectibles] which are uncertain."

Id. 7 - 3 to 4.

In its brief, Staff did not dispute the Company's assertion that it followed its established accounting procedure for recording bad debt expense. However, Staff took issue with the application of that procedure over the twenty-eight month period at issue, September 2007 through December 2009. According to Staff, ratepayers should not be required to pay excessive interest, as the expense levels used to derive the Company's 'under-recovered' position were determined by the Company and were excessive compared to actual write-offs.

According to Staff, had the procedure been properly applied by the Company, over the long-term of twenty-eight months, the Company's timing of reserve-adjusting accounting entries should have closely tracked actual write-offs, with the result that interest payable to the Company or the ratepayer would have been largely offset. In fact, as Mr. Furlong testified, ratepayers were charged interest for every month of the SBC period. *T 43- 25 to 44-16*.

The Initial Decision

In her April 14, 2010 Initial Decision, ALJ Jones recommended that the \$1.080 million of interest should be shared on a 50/50 basis between PSE&G and its ratepayers given the poor economy and the need to set rates "in the most equitable manner that neither penalizes the ratepayers of the Company." I.D. at 13. On a prospective basis the Company should file a schedule, with its next SBC filing, comparing its debt-reserve additions to net write-offs for the SBC period proposed and for the prior two years. "Further, the Company should provide an explanation when the bad-debt reserve additions vary from the net write-offs by more than 5%". *Id.*

Exceptions and Replies

In its Exceptions to the Initial Decision, the Company maintained that the ALJ's recommendation that PSE&G's shareholders absorb half of the \$1.079 million in interest was "arbitrary and contrary to established practice for the SBC". *PSE&G Exceptions at 14*. Additionally, the Company stated that there was no legal basis for the proposition that utility ratemaking should be based on the state of the economy or 'economic uncertainty, "and that "... the Board must reverse the Initial Decision's recommendation that the accrued interest on [the Bad Debt] component of the electric SBC be 'shared' on a 50%/50% basis between PSE&G shareholders and ratepayers". *Ibid.* According to the Company, the appropriate forum for raising such an issue is through a request for either a rulemaking or a generic proceeding, or via some other prospective adjustment to the interest methodology". *Id.* at 17. In its Reply to

Exceptions, PSE&G maintained that there is no evidence to support the sharing of the accrued interest, and no record evidence, accounting requirement or Board policy that discourages the use of a bad debt reserve. PSE&G Reply at 6. The Company is required to make sufficient accruals to the bad debt reserve to ensure that there are adequate funds to cover the anticipated level of write-offs which were high during the period in question. *Id.* at 7.

In its Exceptions to the Initial Decision, Rate Counsel argued that the Board should reject the ALJ's finding that there should be a 50/50 sharing of interest, and that the ratepayer should bear none of it, arguing that in splitting the accumulated interest constituted a shared sacrifice, "with no sacrifice on the part of the Company". *RC Exceptions* at 13. According to Rate Counsel, PSE&G has charged its customers interest, not as a carrying charge associated with reasonable and prudent utility expenditures, not as the result of actual bad debt write-offs, but rather as a result of an accounting entry..." *Id.* at 14. In its reply to exceptions, Rate Counsel stated that the interest charged to ratepayers does not reflect PSE&G's cost of financing deferred money and is only the result of an accounting entry. While the use of the reserve provides a better matching for financial reporting purposes, it does not depend on the actual level of bad debt write-offs and does not reflect actual carrying charges incurred by the Company. *RC Reply* at 15—16. All interest charged should be disallowed as the expenses used to derive the under-recovery were within the Company's control and excessive relative to actual write-offs. *Id.*

DISCUSSION AND FINDING

The Board has been given broad authority in the general supervision, regulation of and control over public utilities. N.J.S.A. 48:2-13. The Legislature has delegated its power over the activities of public utilities and has vested the Board with broad discretion in the exercise of that authority. See, In re Public Service Elec. And Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings, 167 N.J. 377 (2001). In exercising its authority to set just and reasonable rates as mandated by N.J.S.A. 48:2-21, the Board carries out a legislative function which requires the use of its expertise in a manner that is sufficiently flexible to be responsive to changing conditions, and which balances complex and competing interests. *Id.*

Therefore, based on the Board's careful review and consideration of the record in this proceeding, including the testimony, briefs and exceptions, the Board HEREBY FINDS the Initial Decision to be reasonable, in the public interest and in accordance with the law.

The Board HEREBY ACCEPTS the ALJ's finding that recovery of \$254,000 of PJM-allocated member default costs through the NGC should be disallowed. The Board is persuaded that PSE&G has failed to carry its burden under N.J.S.A. 48:2-21(d) of showing that the PJM member default charges are properly recoverable through the NGC as the difference between the market value of the energy and the price paid to the NUGs under the pre-existing contracts. Citation to provisions in the Company specific addendum filed in the annual BGS proceeding and included in the section on power that can be available to offset requirements associated with the Company's BGS contingency plan, does not provide support for recovery in this proceeding.

The Board HEREBY ACCEPTS the ALJ's finding that there be a 50/50 sharing between PSE&G and its ratepayers of the \$1.080 million of bad debt-related interest. While the Board recognizes that it has allowed the Company to maintain a reserve that it can draw against when

accounts are actually written off, the Board also recognizes that, as acknowledged by the Company, the forecasts it uses in determining the accrual rate are uncertain. Accordingly, the Board HEREBY DIRECTS that in future SBC proceedings, the Company will submit accounting details comparing reserve additions to net bad debt write-offs for the period covered by the SBC and the prior two years, including an explanation of any discrepancy of plus or minus 5.0% between net bad debt write-offs and reserve additions.

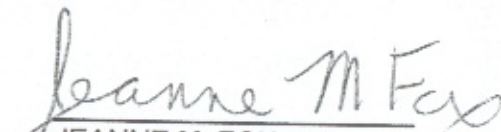
As a result of this approval, typical residential electric customers using 7,800 kWh per year will see an increase in their annual electric bills of \$20.37 or 1.42%. Typical residential gas customers using 1,210 therms per year will see an increase in their annual gas bills of \$6.56 or 0.37%.

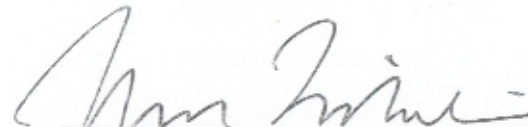
The Board HEREBY ORDERS that tariff sheets be filed by PSE&G within five (5) business days of receipt of a signed order in this docket to reflect an NGC rate of 0.4947 cents per kWh, an electric SBC/Bad Debts rate of 0.0837 cents per kWh, an electric EE&RE rate of 0.2920 cents per kWh, and a gas EE&RE rate of 2.8520 cents per therm.

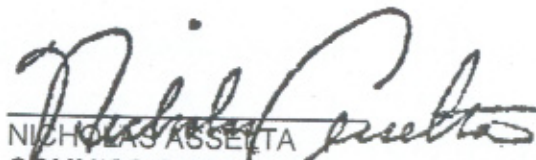
DATED: 6/23/10

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

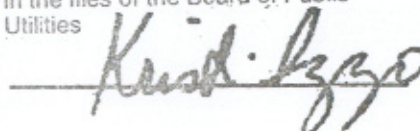

NICHOLAS ASSELTA
COMMISSIONER


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



SERVICE LIST

IN THE MATTER OF THE MOTION OF PUBLIC SERVICE ELECTRIC AND
GAS COMPANY FOR APPROVAL OF CHANGES TO ITS ELECTRIC AND
SOCIETAL BENEFITS CHARGE RATES; FOR A CHANGE IN ITS ELECTRIC NON-UTILITY GENERATION CHARGE RATE; AND
FOR CHANGES IN THE TARIFF FOR ELECTRIC SERVICE, B.P.U.N.J. NO. 14 ELECTRIC, AND FOR CHANGES IN THE TARIFF
FOR GAS SERVICE, B.P.U.N.J. NO.13 GAS
BPU Docket No. ER09020113

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 5673-09

AGENCY DKT. NO. GR09020113

IN THE MATTER OF THE PETITION OF
PUBLIC SERVICE ELECTRIC AND GAS
COMPANY FOR APPROVAL OF CHANGES
IN ITS ELECTRIC AND GAS SOCIETAL
BENEFITS CHARGE RATES; FOR A
CHANGE IN ITS ELECTRIC NON-UTILITY
GENERATION TRANSITION CHARGE RATE;
AND FOR CHANGES IN THE TARIFF FOR
ELECTRIC SERVICE B.P.U.N.J. NO. 14
ELECTRIC AND CHANGES IN THE TARIFF
FOR GAS SERVICE B.P.U.N.J. NO. 14 GAS.

Gregory Eisenstark, Assistant General Corporate Rate Counsel, for petitioner,
appearing pursuant to N.J.A.C. 1:1-5.4(a)(2) (Frances I. Sundheim, Esq.,
VP and Corporate Rate Counsel, attorneys)

Diane Schultz, Assistant Deputy Public Advocate, for respondent, Division of
Rate Counsel appearing pursuant to N.J.A.C. 1:1-5.4(a)(2) (Stephanie A.
Brand, Esq., Director)

Alex Moreau, Deputy Attorney General, appearing pursuant to N.J.A.C. 1:1-5.4(a)(2) for respondent (Paula Dow, Attorney General of New Jersey,
attorney)

Record Closed: February 19, 2010

Decided: April 14, 2010

BEFORE IRENE JONES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Public Service Electric and Gas Company (Petitioner or Company) filed a petition with the Board of Public Utilities on February 9, 2009, seeking a change in its annual Electric and Gas Societal Benefits Clause (SBC) rates and a change in its electric Non-Utility Generation Charge (NGC) rate.¹

The petition proposed to decrease rates for the electric SBC components, exclusive of its Remediation Adjustment Clause (RAC) and its Universal Service Fund (USF) by \$9.093 million, effective July 1, 2009, and to decrease its NUG components by \$9.767 million, for the overall annual net decrease of \$18.860 million based on actual and forecasted data through June 30, 2010.

The petition also sought to increase rates for the Company's Gas SBC Energy Efficiency and Renewable Energy (EE & RE) rate component to recover \$3.749 million in additional revenues from its gas customers, effective July 1, 2009.

On May 26, 2009, the petition was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case. A prehearing conference was held and concluded on July 23, 2009.

On July 31, 2009, the Company filed an update with supplemental direct testimony and revised schedules of its Director of Rates, Gerald W. Schirra. The update filing is based on actual data through June 30, 2009, and projected data through December 31, 2010. As a result of the update,² the company no longer sought to decrease rates but proposed an increase in its NGC rates of \$121.092 million, annually. Additionally, the Company proposed an electric SBC decrease of \$16.635 million for

¹ The SBC is applicable to both electric and gas rates; the NGC only applies to electric rates. The SBC recovers costs related to certain social, energy efficiency, and renewable energy programs, as set forth in the Electric Discount and Energy Competition Act of 1999 (EDECA), N.J.S.A. 48:3-49 et seq. and specifically N.J.S.A. 48:3-60(a). The NGC recovers above-market costs associated with BPU-approved power purchase agreements and tariffs PSE&G entered into with non-utility generators pursuant to the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 823a et seq. (PURPA).

² The changes included lower actual and forecast NUG revenues, a changed recovery period (1/1/10 through 12/31/10 instead of 7/1/09 through 6/30/09) and a revised kwh output forecast.

2010, resulting in a total annual increase of \$104.457 million or a 1.43% increase for an average residential customer. For the gas SBC, the proposed rates would increase approximately \$15.173 million, annually, or a 0.39% increase for an average residential heating customer.

In response to the Company's updated filing, the Division of Rate Counsel (Rate Counsel) filed a motion on August 7, 2009, seeking to extend the procedural schedule by six weeks. On August 17, the Company filed a brief in opposition to Rate Counsel's motion. On October 9, the undersigned issued an Order on the Motion along with a Prehearing Order extending the procedural schedule for three weeks.

On November 20, 2009, Rate Counsel filed the direct testimony of its expert witness, Andrea Crane. On December 1, 2009, PSE&G filed rebuttal testimony of Gerald Schirra and Daniel M. Furlong.

Public hearings were held on November 9, in Hackensack, November 10 in New Brunswick and in Mount Holly on November 12, 2009. An evidentiary hearing was held and concluded on December 15, 2009, at the Office of Administrative Law. Post-hearing submissions were filed on February 12 and 19, 2010, at which time the record closed. The parties to this proceeding are the Company, Rate Counsel and the Board Staff of the New Jersey Board of Public Utilities.³

BACKGROUND

The Electric Discount and Energy Competition Act (EDECA), N.J.S.A. 48:3-49 et seq., was enacted on February 9, 1999. Among its avowed purposes was to lower the high cost of energy and improve the quality and choices of service for all the State's consumers, N.J.S.A. 48:3-50a(1), and to afford fair treatment to all stakeholders during the transition from a regulated to a competitive power-supply marketplace. N.J.S.A. 48:3-50a(12); (SIB at 25). EDECA established the framework for the deregulation and restructuring of the State's electric and natural gas utilities and set forth certain

³ At the request of the undersigned, Staff's brief was re-filed on February 19, 2010. Subsequently, it was discovered that Staff's brief was filed in another location within the OAL on January 12, 2010.

directives and timetables regarding the implementation of electric retail choice. The BPU was given broad authority and discretion to implement and oversee the transition from a regulated to a competitive power supply marketplace. In re Pub. Serv. Elec. and Gas Co. Rate Unbundling, Stranded Costs and Restructuring Filings, 330 N.J. Super. 65, 139 (App. Div. 2000), aff'd, 167 N.J. 377, cert. denied, 534 U.S. 813, 122 S. Ct. 37, 151 L. Ed. 2d 11 (2001).

Pursuant to EDECA, the Board established the Company's electric Social Benefits Charges (SBC) and its Non-utility Generation Transition Charge (NGC) in 1999, including specific components of the SBC and the associated cost-recovery mechanisms. In re Pub. Serv. Elec. and Gas Co. Rate Unbundling, Stranded Costs and Restructuring Filings, Docket Nos. EO97070461, EO97070462 and EO97070463 (August 24, 1999). Pursuant to the Electric EMP Order, to the extent that expenditures for these programs exceeded the amount of their cost recovery, the expenditures were subject to deferred accounting treatment for future recovery at the close of the transition period or on or before July 31, 2003. Thus, each electric utility was required to file a request for recovery of deferred expenses pertaining to un-recovered balances in the SBC, NGC, and Market Transition Charge and any transition period purchased power costs. In re the Petition of Pub. Serv. Elec. and Gas Co. for Approval of Changes in its Tariff for Elec. Serv., Depreciation Rates, and for Other Relief, Docket Nos. ER07050303, EO97070461, EO97070462 and EO7070463 (July 17, 2002). PSE&G's gas SBC was established on August 1, 2000. In re Pub. Serv. Elec. and Gas Co. Rate Unbundling Filing Pursuant to Section 10, Subsection A of the Elec. Discount and Energy Competition Act of 1999, Docket Nos. GX99030121 and GO99030124 (July 31, 2000). (SIB at 3.)⁴

Prior to the conclusion of the Transition Period, the Board directed each State utility to make a filing to reset its electric SBC and NTC rates.⁵ On August 28, 2002, the Company filed a request with the Board seeking authority to reset its rates, as required

⁴ The following designation will be used in this Initial Decision. SIB – Staff's Initial Brief; SRB – Staff's Reply Brief, PIP and PRB – Petitioner's Initial Brief; Petitioner's Reply Brief; RIP and RCRB – Rate Counsel's Initial Brief and Rate Counsel's Reply Brief.

⁵ Order Directing the Filing of Supplemental Testimony and Instituting Proceedings to Consider Audits of Utility Deferrals, BPU Docket Nos. ER02050303, EO97070461, EO97070462, and EO97070463 (July 22, 2002 Order).

in the July 22, 2002, Order. For purposes of re-setting rates, effective August 1, 2003, the SBC and NTC case issues were consolidated with the Company's then-pending electric-base-rate case. The base-rate case concluded with a Stipulation dated June 6, 2003 (June 6th Settlement), resolving all issues. Thereafter, the Board issued its Summary Order of July 31, 2003, adopting the June 6th Settlement with certain modifications, followed by a Final Order that finalized the Company's electric SBC and NTC cost components through the end of the transition period, July 31, 2003, and established new SBC and NTC rates effective August 1, 2003. The Final Order also established the interest calculation methodology for the SBC/NGC. Pursuant to the Order, the Company is allowed to recover interest on its underrecovered balances and credits customers with interest on its overrecovered balances. Pursuant to the Final Order, the interest rate is based on the two-year constant maturity treasuries plus 60 basis points and the rate is adjusted each year on August 1, (PIB at 3).

The NGC rate is designed to recover the above-market costs of generation purchased by PSE&G from non-utility generators (NUGs). The SBC components addressed in this proceeding relate to the recovery of: 1) Energy Efficiency and Renewable Energy (EE & RE) costs pursuant to the State's Clean Energy programs, both electric and gas, and 2) the value of electric customer receivables expected to be "written off" as uncollectible by the Company (Petition 3-6; P-4 6-1 to 7-12). (SIB at 3, 4.)

ISSUES

At issue in this proceeding is the Company's proposal to recover \$254,000⁶ of costs stemming from its membership in the Pennsylvania, New Jersey and Maryland grid, commonly referred to as the PJM. The PJM has assessed its members in the interconnection fees related to PJM member defaults. The company purchases NUG power from the PJM and the costs above-market generation is recovered through the NGC. The Staff and Rate Counsel dispute that the NGC is the appropriate vehicle from which to recover these costs.

⁶ Rounded up from \$253,816.

The second issue is the Company's request to recover interest on its undercollection of bad-debt expenses. Rate Counsel proposes a \$1.0799 million disallowance of the interest expense that has occurred on the under-recovered social program component of the Company's electric SBC rates (RC4). Staff agrees with Rate Counsel, although both concede that the company's methodology for recovery of these costs is appropriate and pursuant to Board policy.

PJM MEMBER DEFAULTS

The Company's petition was supported by the direct testimony of Gerald W. Schirra, the Director of Rates and Regulation. (P-4.) Rate Counsel presented prefiled testimony of Andrea C. Crane (Crane) of the Columbia Group, Inc. (RC-4.) In response to Ms. Crane's prefiled testimony, rebuttal testimony was filed by Mr. Schirra for the PJM default costs and Mr. Daniel Furlong, the assistant controller of PSE&G Enterprise Group, Inc. Services Corporation, on SBC interest issue. The Company is a member of the Pennsylvania, New Jersey, Maryland interconnection (PJM). The PJM has assessed PJM members certain charges related to the default of two sister PJM members, PJS Capital, LLC and Power EDGE, LLC. The Company has placed its assessment, \$254,000, in the NGC for recovery from the ratepayers.

Rate Counsel witness Crane disagrees that the NGC is an appropriate place for recovery of this assessment. She asserts that the NCG is intended to recover the difference between the prices which the Company purchases generation from the NUGs and the market price of that power. In her view, the market price is independent of any additional charges imposed by the PJM emanating from other non-market factors. Further, the NGC was not intended to be a "pass through" of costs that are not related to the purchase or sale of non-utility generation. (RC-4, pp. 10, 11.)

Moreover, since the ratepayers are not responsible for the incurrence of these costs, it is unreasonable for them to pay for it. Crane recommends that the Company seek to recover this assessment from its non-utility generators or its shareholders. (RC4, p. 11.)

Company witness Schirra retorts that it is only as a result of regulation (electric restructuring, PURPA and the BGS auction), that the Company is obligated to purchase NUG purchased power. (P-7, p. 4.) Pursuant to the terms of the PJM Operating Agreement, the net cost of the defaults was allocated to all PJM members. The allocation of the assessment is based on "the dollar value of transactions each member executed in the PJM Markets" during the time that the defaults occurred. (P-7, pp. 4-5). Thereafter, the PJM reduced its payments to all members by their allocated share of default costs, thus reducing the Company's net revenues from NUG sales by \$254,000. He concludes that this is not an extraneous cost which the Company is simply seeking to recover through the NGC.

Further, he deems irrelevant that any disallowance of this expense will not impact the Company's financial integrity. It is an issue of cost recovery, not financial integrity. Under the Board approved methodology, the NGC is a clause mechanism whereby the Company recovers dollar for dollar, its above-market non-utility generation costs.

DISCUSSION

Staff agrees with witness Crane that these costs should not be included in the NUG rate. Staff and Rate Counsel contend that the default costs are not directly related to the NUG contracts between the Company and NUG Generators. Further, Staff asserts that the Company has failed to show any precedent from any other public utility commission approving a recovery of these costs from the ratepayers. And that this is the first instant where the Company has requested recovery of these costs.

In its brief, the Company asserts that the recovery of these costs are appropriately necessary and are an "unavoidable consequence" of the Company's compliance with the BPU's directive that it sell its purchased NUG power in the PJM markets.⁷ The PJM assessment is simply a cost of doing of business with the PJM and

⁷ Indeed, the Company notes that it does not need NUG-purchased power but is obligated to continue to purchase this power under PURPA and Board Policy.

it is a recoverable expense under the PJM Operating Agreement. Put differently, the Company would not have incurred this expense but for PURPA and the EDECA.

Further, the Company notes that witness Crane concedes that there was no imprudence and that the costs were incurred pursuant to BPU – approved contracts and tariffs. Staff's position is not supported by the record and its contention that these costs are noncommodity costs and not directly related to the NUG contracts is somewhat misleading. The default costs have directly reduced its revenues for the indeed commodity sales of energy in the PJM market, thus they are commodity related. Second, the default costs are directly related to NUG energy sales that the Company makes to the PJM.

Finally, the Company deems irrelevant the lack of legal precedent for recovery of these costs and other State Public Utility Commission. The methodology used to calculate PSE&G NGC rate is "extremely state-specific and unlikely to arise elsewhere."⁸ (PRB at 4.)

Pursuant to N.J.S.A. 48:2-21(d) a public utility bears the burden of showing that an increased in its rates is just and reasonable. And only upon such a showing, shall the Board approve the requested increase. Thus, in a rate proceeding, utility expenses are only recoverable if justified. In re Bd.'s Investigation of Tel. Co., 66 N.J. 476 (1975).

I **FIND** that the petitioner has failed to meet the required burden of demonstrating that this cost is just and reasonable and therefore recoverable in rates. I am persuaded by the Staff and Rate Counsel that this cost has nothing to do with the provision of safe and reliable service. The expense is solely related to the petitioner's membership in the PJM. Admittedly, the expense will only have a negligible impact in rates; however, the next time a PJM member(s) default, the cost could be substantially higher. While it is true that the Company has no control over this expenses and is simply passing on what it was assessed, this fact in and of itself is unjust and unreasonable as the cost is unjustified. Under these facts, there is no incentive for the members of PJM to oppose future assessments if they are allowed to simply pass these costs through.

⁸ See p.17 for footnote.

Interest on Social Program Costs

The Company seeks to recover \$1.0799 million of accrued interest on its under-recovered costs related to SBC Social Program costs.

Witness Crane testified in opposition to the ratepayers paying interest on the under-collection of the company's Social Program costs. She noted that the Company's bad-debt expense-rate component is included in SBC Social Program. The "expenses" occur when the Company adds to its bad-debt reserve.⁹ Subsequently, as the Company writes-off the actual bad debts, it reduces the reserve. Over time, the accruals to the bad-debt reserve should match the net write-offs. If not, a Company is either putting too much or not enough into bad-debt reserve. (RC-4, p. 14.)

Crane testified that PSE&G compares its social program expenses (the amount booked to the bad-debt reserve) monthly to its social program revenues. Interest on over or under-recoveries is then calculated based on the two-year treasury rate at August 1, plus 60 basis points. The monthly interest is accumulated when SBC rates are reset, and this amount is added to other SBC costs to be recovered or credited to the SBC. (RC-4, p. 14.) If revenues exceed bad-debt accruals, then ratepayers will receive interest on the over-recovery. If the bad-debt accruals exceed revenues, then PSE&G receives interest on the under-recovery. Since the calculation of interest is not dependent on the actual level of write-offs, it allows for a situation whereby PSE&G can increase funding to the bad-debt reserve thereby increasing the interest earned on the resulting under-recovery, without incurring any additional write-offs. (RC-4, p. 15.) In this filing, the bad-debt reserve additions have exceeded revenues and net write-offs, resulting in an under-recovery for which the ratepayers must pay the Company interest.

Crane acknowledged that the Board has allowed the Company to collect the bad-debt expense, on a dollar for dollar basis, through the SBC. The amount of bad-debt expenses is based on additions to the Company's bad-debt reserve. The reserve is funded by accounting entries and is simply a rate-making accounting convention.

⁹ The entry is on accounting convention as there is no actual physical bad-debt reserve account.

the year-end accounts-receivable balance. Thus, the accrual is based on the current reserve balance, the forecasted write-offs for the remainder of the year and the forecasted billed revenues. The resulting rate is applied to billed revenues each month to determine the amount charged to bad-debt expense and added to the reserve. (P-8, pp. 4, 6.)

Furlong presented further details in his written testimony as to when an account is considered uncollectible and the company's collection efforts. (P-8, pp. 2, 3.) With respect to forecasted data on write-offs, the Company's collection management group compiles data, annually, to determine the forecasted write-off for the following year. A monthly report is prepared of actual charged-off dollars and these reports are reviewed and compared with forecast ranges. Gaps are investigated and remediated. Write-off data is reviewed to identify trends and sources of payment defaults.

He further stated that daily reports of aged accounts-receivables is also reviewed and followed up with collection activity. Aging reports are used by management for statistical purposes to track and report collections results and identify or correct factors negatively impacting the ability to collect receivables.

Finally, the bad-debt reserve accrual rate is reviewed at least quarterly and is modified when there is a significant change in the forecast. In December, the accrual is adjusted to hit the targeted reserve. The Company has adjusted the accrual rate seven times during the time current SBC period (i.e., September 2007 through June, 2009). (P-8, pp. 4, 6; Sch. 2.)

He acknowledges that while procedure is clear as to the inputs used to determine the accrual rate, it is dependent on forecasts which are uncertain. The uncollectibles for the current SBC period is unusual. He attributes this to the fact that the country is experiencing the most severe economic recession since the 1930's. Thus, write-offs are at the highest level since the 1981-1983 recession. He anticipates this to reverse itself when the economic environment is stable at which time he expects write-offs to just about equal accruals during a calendar year. However, at this

economically-challenging time, he expects write-offs will continue to increase. Indeed, he projects that write-offs in 2010 will likely be even higher than the June 2009 forecast.

DISCUSSION

Staff and Rate Counsel argue that the Company is charging ratepayers' interest for under-collections for which there is no current expenditure as this is simply accounting convention where the Company books additions to its bad-debt reserve. The reserve is drawn down as bad debts are written-off. There is no actual exchange of currency in the transition. They agree, however, that the Board has permitted the Company to use this methodology. Yet, they insist that the methodology is inappropriate because PSE&G benefits from this accounting convention for financial reporting purposes,¹¹ and the ratepayers must pay interest for something that is under the Company's control.

Rate Counsel analyzed the monthly bad-debt reserve addition and found that it ranged from a low of \$1.2 to a high of \$11.4 million. Rate Counsel found that for 2007 net write-offs and reserve additions were in line. In 2008, however, net write-offs were some \$10 million more than net write-offs (RIB at p. 14). During the first nine months of 2009, the Company's net write-offs were \$20.736 million and the bad-debt reserve addition were \$17.241 million. However from July to September, 2009, the Company booked an additional \$17.9 million to the reserve.

Rate Counsel contends that its recommendations will introduce an objective measure into the decision-making process regarding bad-debt reserve additions, and protect ratepayers from paying excessive interest charges due to higher than necessary additions to the bad-debt reserve. (RIB at p. 16.)

The Company contends that the proposed \$1 million disallowance is arbitrary since there is no issue as to the amount or the methodology which has prior Board

¹¹The use of reserve accounting provides a better matching between revenues that are reported on the income statement and bad-debt expenses associated with those revenues. Since there is a delay in writing off bad debts, the use of a direct write-off method could result in financial statements that contain expenses for the current period, i.e., write-offs that relate to prior period revenues.

approval. Further, Rate Counsel's proposal would be more appropriately addressed in a generic or a rulemaking proceeding.

Moreover, the company argues that the proposed disallowance is "particularly egregious" at this moment when the country has faced the most severe economic recession since the Great Depression causing write-offs from uncollectible accounts to be the highest in thirty years. It is due to the poor economy and partially due to regulatory lag, the electric revenues were not sufficient to keep up with the increasing accruals.

Having considered the arguments, I am persuaded that any change in the way the Company sets its accruals should be done prospectively. However, given the poor economy and ever-increasing energy costs, it is imperative that rates be set in the most equitable manner that neither penalizes the ratepayers or the Company. In this period of economic uncertainty, if there is to be a sacrifice, it is critical that the sacrifice be a shared one. Thus, it is recommended that interest methodology be adjusted to remove the perverse incentive that results from this accounting convention. In light of the unusual circumstances in this case, I **FIND** that there should be a sharing of the interest expense on a 50/50 basis. In other words, the ratepayers will only pay 50% of the \$1.075 million expense. I further **FIND** that the Company should file a schedule, with its next SBC filing, comparing its debt-reserve additions to net write-offs for the SBC period and for the prior two years. Further, the Company should provide an explanation when the bad-debt reserve additions vary from the net write-offs by more than 5%.

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 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 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, N.J. 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 14, 2010

DATE

Date Received at Agency:

Date Mailed to Parties:

sej



IRENE JONES, ALJ

APPENDIX

WITNESSES

For Petitioner:

Gerald W. Schirra
Daniel Furlong

For Rate Counsel:

Andrea Crane

EXHIBITS

For Petitioner:

- P-1 Certification of Mailing
- P-2 Proof of Publication
- P-3 Company's Public Statement (ID Only)
- P-4 Direct testimony of Gerald Schirra
- P-5 Updated Filing, July 13, 2009
- P-6 Gerald W. Shierra – 3C Update (corrected schedules to the July 31, 2009, Update)
- P-7 Rebuttal testimony of Gerald W. Shirra
- P-8 Rebuttal testimony of Daniel Furlong

For Rate Counsel:

- RC-1 Responses to S-PS.SBC NGC-3
- RC-2 Power Purchase and Operations Coordination Agreement between PSE&G and Wheelabrator Falls, Inc.
- RC-3 Tariff Sheet No. 14 Elec.
- RC-4 Direct testimony of Andrea C. Crane