



Agenda Date: 6/7/10
Agenda Item: 21

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

ENERGY

IN THE MATTER OF THE DEFERRED BALANCES)
AUDIT OF PUBLIC SERVICE ELECTRIC AND GAS) ORDER APPROVING STIPULATION
COMPANY, PHASE II) OF SETTLEMENT
)
) DOCKET NOS.
) EX02060363 and EA02060266

Frances I. Sundheim, Esq., Vice President and Corporate Rate Counsel; Andrew K. Dembia, Esq., Assistant Corporate Rate Counsel for the Petitioner, Public Service Electric and Gas Company

Paul Flanagan, Esq., Litigation Manager; Ami Morita, Esq., Deputy Public Advocate, for the Director, Department of the Public Advocate, Division of Rate Counsel (Stefanie A. Brand, Esq., Acting Public Advocate and Director)

Caroline Vachier, Deputy Attorney General, Alex Moreau, Deputy Attorney General, and Babette Tenzer, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

BY THE BOARD:

BACKGROUND

In February 1999, the governor signed into law the Energy Discount and Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., which deemed electric generation to be a competitive service that, with certain limited exceptions, the Board would not regulate, and for which it would not fix or prescribe the rates, tolls, charges, rate structures, rate base, or cost of service. N.J.S.A. 48:3-56(b). EDECA also empowered the Board to require that an electric public utility, such as Public Service Electric and Gas Company ("PSE&G", "Company"), functionally separate its monopoly business functions, such as retail distribution, from its competitive electric generation service or its electric power generator functions. N.J.S.A. 48:3-59(a)(1). These competitive services or functions would then be provided by a related competitive business segment of the public utility or the public utility holding company, in a process that came to be known as "restructuring."

On August 24, 1999, the Board issued a Final Decision and Order in I/M/O Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs, and Restructuring Filings, Docket No. EO97070461, EO97070462, and EO97070463 ("Restructuring Order"). The Restructuring Order allowed PSE&G the opportunity to recover, on a net present value basis, up to \$540 million (net of taxes) of "unsecuritized" stranded costs through a Market Transition Charge ("MTC") over the four-year transition period from August 1, 1999 through July 31, 2003.

During the latter portion of the transition period, the Company filed a petition to increase its electric base rates I/M/O The Petition of Public Service Electric and Gas Company for Approval of Changes in Electric Rates, for Changes in the Tariff for Electric Service, B.P.U.N.J. NO. 14 Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, for Changes in its Electric Depreciation Rates Pursuant to N.J.S.A. 48:2-18, and for Other Relief, Docket No. ER02050303 and, separately, a filing regarding its deferred balances I/M/O The Deferred Balances Audit of Public Service Electric and Gas Company, Docket Nos. EX02060363 and EA02060266. The two filings were subsequently combined as a single proceeding to determine the appropriate level of the Company's post-transition rates.

In September, 2002, in the instant docket, the Board approved the selection of outside auditors to conduct a two-phase audit of the Company's restructuring-related deferred balances, with the first phase covering the first three years of the transition period (August 1999 through July 2002) ("Phase I"), and a second phase covering the fourth and final year of the transition period (August 2002 through July 2003) ("Phase II"). In their December, 2002 Report, the auditors found that the Company complied, in all material respects, with Board orders concerning deferred balances for Phase I.

Subsequent to the issuance of the Phase I Report, Board Staff raised questions regarding the Company's accounting for the MTC. These questions were considered but not resolved in the Phase II Audit Report covering the final year of the Transition Period. Acknowledging the unresolved issues, the Board, via a May 13, 2005 Secretary's letter, requested that "interested parties" respond to a set of questions regarding the magnitude of PSE&G's stranded cost recovery during the transition period through the MTC mechanism.

The Company took the position that the MTC reconciliation method had already been established by the Board and was appropriate, and that reconsideration of the methodology was barred as a matter of law. Rate Counsel and Board Staff challenged PSE&G's position, asserting that the Company over-recovered the MTC, and that the Company should refund ratepayers \$114.5 million plus interest.

By Order dated February 7, 2007, the Board transferred the matter to the Office of Administrative Law for an evidentiary hearing. Following full briefing, in January, 2009 Administrative Law Judge ("ALJ") Braswell issued his Initial Decision, finding that reconsideration of PSE&G's MTC recovery during the Phase I period was barred, but that the Board could schedule an evidentiary hearing to address the MTC reconciliation for the Phase II period.

In its written Order dated September 3, 2009, the Board rejected the ALJ's Initial Decision. In accordance with that Order, the Company, Rate Counsel, and Board Staff (the Parties") submitted additional briefs.

The Parties have subsequently engaged in comprehensive settlement discussions regarding the issues in this proceeding, and on May 27, 2010, the Parties executed the attached Stipulation.

THE STIPULATION OF SETTLEMENT¹

In addition to the traditional stipulation language covering waivers, admissions and intentions, the parties set forth the following foundation of settlement:

1) For the purposes of settlement, the parties agree that PSE&G's collections from ratepayers through the MTC mechanism, putting aside amounts already returned to ratepayers following the Board's July 31, 2003 Summary Order and April 22, 2004 Deferral Order, exceeded the Company's unsecuritized stranded costs by \$122 million, including all interest relating to that over-recovery ("Remaining Over-recovery").

2) As reflected on the attachment A to the Stipulation of Settlement ("Stipulation") revised tariff sheet No. 60, the Remaining Over-recovery will be calculated to be returned to PSE&G's electric ratepayers through a separate component of the Non-Utility Generation Charge ("NGC") over a twenty-four month period beginning on the first date on which both the Board's Decision and Order approving the Stipulation and the Board's Decision and Order approving the Stipulation of Settlement in the PSE&G Rate Case proceeding bearing BPU Docket No. GR09050422 are effective ("the Refund Period").

3) No additional interest will accrue on the unamortized amount of the Remaining Over-recovery over the period during which it is returned to PSE&G's electric ratepayers.

4) Any minor over or under-recovery balance at the end of the twenty-four months should be transferred to the NGC, and the Market Transition Charge Refund component of the NGC will be reset to zero and eliminated. The NGC will then be reset accordingly without further Board action. PSE&G will file a compliance tariff sheet to effectuate the change in the NGC.

FINDINGS

Based on the Board's careful review and consideration of the extensive record in this proceeding, as well as the review of the proposed stipulation, and recognizing the value of finality and certainty in the process, the Board HEREBY ADOPTS the Stipulation of Settlement as its own as if set forth here in its entirety. The Board HEREBY FINDS the Stipulation of Settlement to be reasonable, in the public interest and in accordance with the law. The

¹ Although described at some length in this Order, should there be any conflict between this summary and the Stipulation of Settlement, the terms of the Stipulation of Settlement control, subject to the findings and conclusion in this Order.

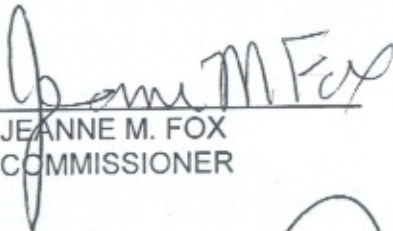
Company is HEREBY DIRECTED to file the appropriate tariff sheet within 7 days of the issuance of this Order.

DATED: 6/7/10

BOARD OF PUBLIC UTILITIES
BY:



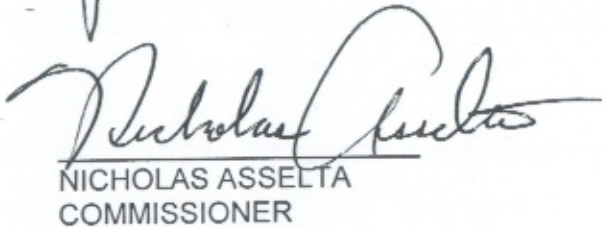
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER



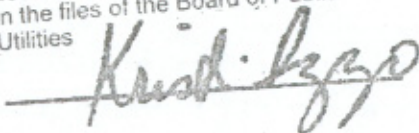
ELIZABETH RANDALL
COMMISSIONER

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



IN THE MATTER OF THE DEFERRED BALANCES AUDIT OF PUBLIC SERVICE ELECTRIC
& GAS COMPANY, PHASE II - DOCKET NOS. EX02060363, EA02060366

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

-----X
IN THE MATTER OF
THE DEFERRED BALANCES
AUDIT OF PSE&G, PHASE II
-----X

BPU DKT. NOS. EX02060363 &
EA02060366

OAL DKT. NO. PUC 03127-07

STIPULATION OF SETTLEMENT

APPEARANCES:

Frances I. Sundheim, Esq., Vice President and Corporate Rate Counsel, John A. Hoffman, Esq., and Matthew M. Weissman, Esq., Wilentz, Goldman & Spitzer, P.A. Counsel for the Petitioner, Public Service Electric and Gas Company

Paul Flanagan, Esq., Litigation Manager; Ami Morita, Esq., Deputy Public Advocate, for the Director, Department of the Public Advocate, Division of Rate Counsel (Stefanie A. Brand, Esq., Acting Public Advocate and Director)

Caroline Vachier, Deputy Attorney General, Alex Moreau, Deputy Attorney General, and Babette Tenzer, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

TO THE NEW JERSEY BOARD OF PUBLIC UTILITIES:

BACKGROUND

1. On February 9, 1999, the Governor signed the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49, et seq., which enacted into law the previously-contemplated electric industry restructuring and, among other things, mandated (a) the opening of the generation portion of the market to competition on August 1, 1999, and (b) phased-in electric rate reductions during a four-year "transition period" beginning on that same date.

Thereafter, the parties engaged in settlement discussions in the then pending restructuring and stranded cost proceedings of Public Service Electric and Gas Company ("PSE&G"), and in March 1999 submitted two alternative resolutions for the Board's consideration. In a Summary Order dated April 21, 1999 and a subsequent Final Decision and Order dated August 24, 1999 in In re Public Service Electric and Gas Company's Rate Unbundling, Stranded Costs, and Restructuring Filings, Docket Nos. EO97070461, EO97070462, and EO97070463 ("Restructuring Order"), the Board resolved PSE&G's restructuring and stranded costs proceedings, determining that the Company would have an opportunity to recover stranded costs of \$2.94 billion during the four-year transition period. Consistent with the requirements of EDECA, the Restructuring Order provided for \$2.4 billion stranded cost recovery through the issuance of "transition bonds" and an opportunity to recover up to \$540 million, net-of-tax (that is, the "unsecuritized" portion of its stranded costs), through a market transition charge, or "MTC," mechanism.

2. During the latter portion of the transition period, on May 24 and August 28, 2002, respectively, PSE&G filed (1) a petition to increase its electric base rates at the end of the period, and (2) information regarding its deferred balances. Those filings were considered in a single proceeding convened to determine the level of the Company's post-transition rates.

3. As indicated above, the deferred balances proceeding and associated base rate case were conducted toward the end of the transition period but while the period was still ongoing, so that rates could be reset and deferred balances addressed at the end of the period.¹

¹ See Summary Order dated July 31, 2003 and Decision and Order dated April 22, 2004 ("Deferral Order"), BPU Docket Nos. ER02050303, ER02080604, OAL Docket Nos. PUC 5744-02, PUC 7893-02.

Concurrent with the deferred balances proceeding, Board Staff initiated an audit of the deferred balances incurred during the four year transition period from August 1, 1999 through July 31, 2003. Since it was necessary for the Board to reset the deferred balances rate by an effective date of August 1, 2003, the Board decided to complete a partial audit, looking at the first three years of the transition period, with a Phase II Audit to review the fourth year of the transition period and to finalize the audit. During the Phase II proceeding Board Staff, beginning in April 2004 and continuing through October 2004, issued a series of discovery requests regarding the methodology used in the 2002-2003 deferred balances proceeding to calculate PSE&G's recovery of unsecuritized stranded costs of \$540 million through the MTC mechanism.

4. In a letter to all parties dated May 13, 2005, the Board Secretary requested that the parties respond to a set of questions regarding the magnitude of PSE&G's stranded cost recovery during the transition period through the MTC mechanism. In a letter dated June 13, 2005, PSE&G took the position that the MTC reconciliation method had already been established by the Board and was appropriate, and that reconsideration of the methodology was barred as a matter of law. Rate Counsel challenged PSE&G's position in a series of submissions to the Board dated June 13, 2005, June 28, 2005, and May 12, 2006, and asserted that the Company over-recovered the MTC by \$114.5 million, and the Company should refund that sum plus interest on the over-recovery.

5. By Order dated February 7, 2007, the Board transferred this matter to the Office of Administrative Law for an evidentiary hearing before Administrative Law Judge Walter M. Braswell.

6. Following the submission of testimony by PSE&G and Rate Counsel in the period March-July, 2008 and discovery by PSE&G, Rate Counsel, and Board Staff, an evidentiary hearing was held before Judge Braswell on July 17, 2008. During the proceeding, both Rate Counsel and the Board Staff took the position that the Company over-recovered the MTC and the over-recovered amount should be refunded to the ratepayers. Following full briefing, on or about January 15, 2009 ALJ Braswell issued his Initial Decision, finding that reconsideration of PSE&G's MTC recovery during the "Phase I" period (August 1, 1999 – July 31, 2002) was barred as a matter of law, and that the Board could schedule an evidentiary hearing to address the MTC reconciliation for the "Phase II" period of August 1, 2002 through July 31, 2003.

7. At its August 19, 2009 agenda meeting and in a written Order dated September 3, 2009, the Board voted to reject ALJ Braswell's Initial Decision, retained jurisdiction over the matter, and established a supplemental schedule for briefing on the merits of the question of whether any MTC-related refunds are due to PSE&G's electric customers. In accordance with that Order, PSE&G, Rate Counsel, and Board Staff submitted initial and reply supplemental briefs on September 25, 2009 and October 23, 2009, respectively.

8. The undersigned parties ("parties") have subsequently engaged in comprehensive settlement discussions regarding the issues in this proceeding, and hereby STIPULATE AND AGREE to the following:

STIPULATED MATTERS

9. For the purposes of settlement, PSE&G's collections from ratepayers through the MTC mechanism, putting aside amounts already returned to ratepayers following the Board's

July 31, 2003 Summary Order and April 22, 2004 Deferral Order, exceeded the Company's unsecuritized stranded costs by \$122 million, including all interest, past and prospective, relating to that over-recovery ("Remaining Over-recovery").

10. As reflected on the form revised tariff sheet attached hereto, the Remaining Over-recovery will be calculated to be returned to PSE&G's electric ratepayers through a separate component of the Non-Utility Generation Charge (NGC) over a 24-month period beginning on the first date on which both the Board's Decision and Order approving this Stipulation and the Board's Decision and Order approving the Stipulation of Settlement in the PSE&G Rate Case proceeding bearing BPU Docket No. GR09050422² are effective ("the Refund Period").

11. No additional interest will accrue on the unamortized amount of the Remaining Over-recovery over the period during which it is returned to PSE&G's electric ratepayers.

12. Any minor over or under-recovery balance at the end of the Refund Period should be transferred into the NGC, and the Market Transition Charge Refund component of the NGC will be reset to zero and eliminated. The NGC will then be reset accordingly without further Board action. PSE&G will file a compliance tariff sheet to effectuate the change in the NGC.

FURTHER PROVISIONS

13. This Stipulation of Settlement ("Stipulation") represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and

² In The Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 14 Electric and B.P.U.N.J. No. 14 Gas Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, etc., BPU Docket No. GR09050422, OAL Docket No. PUCRL-07599-2009N ("Rate Case proceeding").

approved in its entirety by the Board, any party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board, in any applicable Order(s), then any party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

14. It is the intent of the parties that the provisions hereof be approved by the Board as being in the public interest. The parties further agree that they consider the Stipulation to be binding on them for all purposes herein.

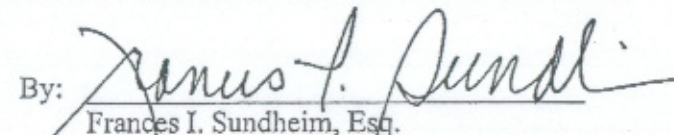
15. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of these proceedings. Except as expressly provided herein, PSE&G, the Board, its Staff, and Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein, in total or by specific item. The parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

16. The undersigned parties recommend that the Board consider this Settlement and the Stipulation of Settlement regarding the Rate Case proceeding at the same June 7, 2010 agenda meeting.

WHEREFORE, the parties hereto do respectfully submit this Stipulation and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By:



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Date:

5.27.10

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey Board of Public
Utilities

By:



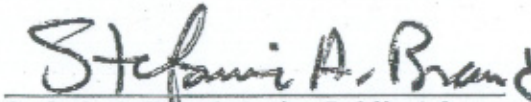
Alex Moreau, DAG
Babette Tenzer, DAG

Date:

05/27/10

NEW JERSEY DIVISION OF RATE COUNSEL

By:



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Director, Division of Rate Counsel
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Date:

5/27/10

Attachment A

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

XXX Revised Sheet No. 60

B.P.U.N.J. No. 14 ELECTRIC

Superseding

XXX Revised Sheet No. 60

NON-UTILITY GENERATION CHARGE

Cost Recovery (cents per kilowatthour)				
	St Lawrence NYPA Credit RS, RSP, RHS and RLM	Non-Utility Generation above market costs	Market Transition Charge Refund	Total
Total Cost per kilowatthour		0.2317	(0.1329)	
Amount per kilowatthour of cost recovery after application of losses:				
RS, RSP, RHS & RLM (Loss Factor =7.5377%)	(0.0181)	0.2506	(0.1437)	0.0888
Other Secondary (Loss Factor =7.5377%)		0.2506	(0.1437)	0.1069
LPL Primary (Loss Factor =5.1232%)		0.2442	(0.1401)	0.1041
HTS Subtransmission (Loss Factor =2.9402%)		0.2387	(0.1369)	0.1018
HTS High Voltage (Loss Factor =1.4590%)		0.2351	(0.1349)	0.1002
Charges including New Jersey Sales and Use Tax (SUT)				
RS, RSP, RHS & RLM	(0.0194)	0.2681	(0.1538)	0.0949
Other Secondary Service		0.2681	(0.1538)	0.1143
LPL Primary		0.2613	(0.1499)	0.1114
HTS Subtransmission		0.2554	(0.1465)	0.1089
HTS High Voltage		0.2516	(0.1443)	0.1073

NON-UTILITY GENERATION CHARGE

This mechanism is designed to insure recovery of costs associated with activities that are required to be accomplished to achieve specific public policy determinations mandated by Government. This charge shall recover: 1) above market costs associated with non-regulated generation costs which are related to long-term contractual power purchase arrangements approved by the Board and/or established under requirements of the Public Utility Regulatory Policies Act of 1978 and 2) other generation costs as may be approved by the Board. Actual costs incurred by the Company will be subject to deferred accounting. The St. Lawrence New York Power Authority (NYPA) Annual Benefit Allocation credit reflects the annual Economic Benefit allocation for New Jersey's investor owned utilities to supply residential customers' load.

Interest at the two-year constant maturity treasury rate plus 60 basis points will be accrued monthly on any under- or over-recovered Non-utility Generation above market cost balances. This interest rate shall change each August 1.

The Market Transition Charge Refund is a credit to customers to refund over collection of the Market Transition Charge during the transition period. Interest will not be accrued on any under- or over-recovered Market Transition Charge Refund balances.

Date of Issue:

Issued by FRANCES I. SUNDHEIM, Vice President and Corporate Rate Counsel
80 Park Plaza, Newark, New Jersey 07102
Filed pursuant to Order of Board of Public Utilities dated
in Docket No.

Effective:

MINUTES OF THE BOARD AGENDA MEETING

AGENDA DATE: June 7, 2010

AGENDA ITEM:

DOCKET NOS.

EX02060363, EA03060366

In The Matter of the Deferred Balances Audit
of Public Service Electric and Gas Company –
Phase II Dkt. Nos. EX02060363, EA02060366

On May 27, 2010, Public Service Electric and Gas ("Company"), BPU Staff, and the Department of the Public Advocate, Division of Rate Counsel (collectively, "the Parties") executed a Stipulation of Settlement calling for the Company to return to ratepayers \$122 million relating to the Company's over-recovery of stranded costs through the Market Transition Charge ("MTC"). The \$122 million is to be credited the Company's electric customers over a 24-month period beginning on the first date on which both this Stipulation and the Company's Base Rate Case Stipulation (GR09050422) are approved by the Board.

BOARD ACTION

The Board found that the Stipulation was reasonable, and approves the tariff sheet filed by the Company to be effective on and after the date of the Board's Order in this docket.