STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PROPOSAL BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY TO DISCLOSE INDIVIDUAL CUSTOMERS' PROPRIETARY INFORMATION	: : : :	BPU Dkt. No.: Pending

CERTIFICATION OF DAVID E. PETERSON

David E. Peterson, of full age, hereby certifies:

1. I am employed as a public utility rate consultant by Chesapeake Regulatory Consultants, Inc. of Annapolis, Maryland. My business address is 10351 Southern Maryland Blvd., Suite 202, Dunkirk, Maryland 20754.

2. I have been retained to assist the New Jersey Division of Rate Counsel in the above-referenced proceeding.

3. I have over thirty-three years of experience analyzing regulated utility ratemaking and service matters including three years as a member of a state regulatory commission (South Dakota Public Utilities Commission) and thirty years as a consultant. I have presented testimony in 124 proceedings before nineteen state regulatory commissions, the Delaware House Energy Subcommittee, and the Federal Energy Regulatory Commission. The types of regulated utilities that I have addressed in my analyses and testimonies have included electric, natural gas, propane, telephone, water, steam and sewer companies.

4. I was retained by the Division of Rate Counsel to analyze and to submit testimony on Public Service Electric and Gas Company's ("PSE&G" or "the Company") cash working capital lead-lag study and the resulting revenue requirements there from in the recently completed BPU Docket No. GR09050422 base rate proceeding wherein new base electric

and gas distribution rates for PSE&G were established by Board Orders dated June 7, 2010 (electric) and July 9, 2010 (gas). Those Board Orders permitted the Company to increase its rates by $100 million. I attach a true copy of those orders as Exhibit A.

5. The purpose of my statement at this time is to explain how late paying ratepayers impact PSE&G's revenue requirement and how PSE&G is compensated through rates for the lag in revenue collections from ratepayers, including late paying customers. My statement also explains how PSE&G is compensated through rates for revenues lost due to customers who fail to pay their utility bill, i.e., uncollectible accounts.

6. The lag in time between when PSE&G renders service to customers and when payment for that service from customers is received (referred to in lead-lag studies as the "revenue lag") was part of the revenue requirement formula upon which PSE&G's newly effective electric and gas distribution rates were established.

7. The revenue lag was an integral part of the cash working capital lead-lag study which PSE&G presented in Docket No. GR09050422. Specifically, the lead-lag study sponsored by PSE&G in that rate proceeding, measured the time between (1) PSE&G's provision of service to its customers and the receipt of revenue for that service by PSE&G (the "revenue lag"), and (2) the provision of service by PSE&G and its disbursements to employees and suppliers in payment for the associated costs (referred to in lead-lag studies as the "expense lead"). The difference between the revenue lag and the expense lead is expressed in days. The difference, when multiplied by PSE&G's average daily expenses, quantifies the cash working capital required for utility operations. This cash working capital requirement so determined was included in PSE&G's electric and gas rate bases upon which a rate of return allowance was authorized and made part of PSE&G's revenue requirements.

8. The parties stipulated to PSE&G's lead-lag study that included a 53.89-day average revenue lag. I say "average" revenue lag because the 53.89-day amount includes payments from customers who pay their statements quickly as well as those who PSE&G deems to be late-paying customers. The 53.89-day revenue lag included in PSE&G's

lead-lag study also includes all classes of customers, including residential, commercial, industrial, sales for resale, etc. In other words, the 53.89-day revenue lag that PSE&G calculated in its lead-lag analysis included all types of customers with all types of payment habits, including late-paying customers. Customer accounts that are written-off because they remain unpaid, however, were accounted for separately from the lead-lag analysis but were nevertheless incorporated into PSE&G's revenue requirement in Docket No. GR09050422, as explained later in my statement.

9. Thus, PSE&G received full compensation for costs imposed by late-paying customers through recognition of the average revenue lag that was incorporated into the lead-lag study and made a part of PSE&G's rate base upon which a return allowance was granted.

10. To the extent that customers accelerate their bill payments because of PSE&G's plans to notify a credit agency of late-paying customers, for each day that PSE&G can reduce its 53.89-day revenue lag, I estimate that such change will reduce PSE&G's annual revenue requirement by $1.58 million in the electric department and by $901,000 in the gas department; based on the rate of return that PSE&G was authorized as a result of the Board's June and July 2010 Orders in Docket No. GR09050422. For example, a 15-day reduction in PSE&G's average revenue lag will reduce the Company's annual revenue requirement by approximately $23.69 million in the electric department and by $13.51 million in the gas department.

11. Despite potentially significant reductions in PSE&G's annual revenue requirement brought about by a reduction in the average revenue lag, PSE&G's present rates were designed to compensate the utility for the stipulated 53.89-day average revenue lag that was included in PSE&G's lead-lag analysis. Thus, should PSE&G's proposed full credit reporting reduce the lag time in customer payments, PSE&G will receive additional revenue for which there is no corresponding cost offset; resulting in a windfall to PSE&G and its stockholders at the expense of New Jersey ratepayers.

12. Similarly, PSE&G receives compensation through rates authorized by the Board for gas customers who fail to pay their gas bill and whose accounts are "written-off" by the

Company as uncollectible. In setting gas distribution rates in PSE&G's most recent base rate proceeding, a normalized allowance for uncollectible gas accounts was included in PSE&G's recoverable operating expenses and annual revenue requirement. PSE&G recovers its uncollectible electric account expenses through the Societal Benefits Clause ("SBC") on a dollar-for-dollar basis. The SBC treatment for uncollectible accounts guarantees cost recovery by PSE&G for its customers' electric accounts that are written-off for failure to pay the amounts due.

13. The costs associated with extended payment lags and uncollectible gas account expenses were explicitly included in the determination of PSE&G's electric and gas revenue requirements in Docket No. GR09050422. Moreover, extended payment lags and uncollectible accounts are elements of business risk for any firm, including regulated public utilities. Business risks are routinely considered by regulatory agencies in establishing a rate of return allowance for regulated public utilities like PSE&G.

14. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

David E. Peterson

Dated: November 8, 2010

EXHIBIT A

Agenda Date: 6/07/10
Agenda Item: 2H

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 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 AND FOR APPROVAL OF A GAS WEATHER NORMALIZATION CLAUSE; A PENSION EXPENSE TRACKER AND FOR OTHER APPROPRIATE RELIEF	) DECISION AND ORDER APPROVING STIPULATION AND ADOPTING INITIAL DECISION FOR ELECTRIC DIVISION) DOCKET NO. GR09050422) OAL DKT NO. PUCRL-07599-2009N

APPEARANCES:

Frances I. Sundheim, Esq., Andrew K. Dembia, Esq., John A. Hoffman, Esq., Matthew Weissman, Esq., Anne S. Babineau, Esq., and Hesser G. McBride, Esq., (Wilenz, Goldman, & Spitzer, P.A.) on behalf of Public Service Electric and Gas Company

Ami Morita, Esq., Felicia Thomas-Friel, Esq., Diane Schulze, Esq., Sarah H. Steindel, Esq., Judith Appel, Esq., and James Glassen, Esq., on behalf of the Department of the Public Advocate, Division of Rate Counsel (**Stefanie A. Brand, Esq.**, Acting Public Advocate and Director)

Caroline Vachier, Alex Moreau, and Jessica L. Campbell, Deputy Attorney Generals, on behalf of Staff of the New Jersey Board of Public Utilities (**Paula T. Dow,** Attorney General of New Jersey)

Ira G. Megdal, Esq., and **Stacy A. Mitchell, Esq.** on behalf of the Electric Cogeneration Customers (Cozen O'Connor)

Steven Goldenberg. Esq. (Fox Rothschild, LLP), and **Paul Forshay, Esq.** (Sutherland, Asbill, and Brennan LLP), on behalf of the New Jersey Large Energy Users Coalition

BY THE BOARD:

On June 2, 2010, Public Service Electric and Gas Company ("PSE&G" or "Company") filed a letter with the New Jersey Board of Public Utilities ("BPU" or "Board") requesting that the Board consider a Stipulation of Settlement ("Stipulation") and an Initial Decision issued by

Administrative Law Judge ("ALJ") Walter M. Braswell as they pertain to electric ratepayers and PSE&G's Electric Division only. By this Decision and Order, the Board considers that request.

BACKGROUND

Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, on May 29, 2009, PSE&G filed a petition with the New Jersey Board of Public Utilities ("BPU" or "Board") seeking to increase its electric distribution base rates by approximately $133.72 million, and its gas distribution rates by approximately $96.92 million. The test year was based on the twelve months ending December 31, 2009, and contained three months of actual data and nine months of projected data. In addition, the Company also sought approval of a gas weather normalization clause, a pension tracker, an expansion of the BPU approved Capital Infrastructure Investment Program ("Infrastructure Program"), as well as other tariff changes.

The petition was transmitted to the Office of Administrative Law ("OAL") on July 8, 2009, and was assigned to ALJ Walter M. Braswell. A pre-hearing order was issued by ALJ Braswell on August 21, 2009, which established certain filing dates and scheduled evidentiary hearings during dates in January, February, and March 2010.

On August 7, 2009, a motion to intervene was filed by the New Jersey Large Energy Users Coalition ("NJLEUC"). In his pre-hearing order, ALJ Braswell granted NJLEUC's motion subject to the condition that NJLEUC submit a list identifying its members who are currently distribution customers of PSE&G and were actively participating in this proceeding. On September 23, 2009, a group of electric cogeneration customers consisting of Bayonne Plant Holding, LLC, Camden Plant Holding, LLC, Newark Bay Cogeneration Partnership, LP and Elmwood Park Power, LLC (collectively referred to as "MEG" or "ECG") filed a motion to intervene in this matter. On October 29, 2009, ALJ Braswell issued an order granting MEG's motion to intervene. On January 5, 2010, NJLEUC furnished its membership list in compliance with the ALJ's Order.

Direct and rebuttal testimony was filed by the Company, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), and MEG. NJLEUC did not file testimony. The Company filed its direct testimony and supporting schedules on May 29, 2009, and its revised direct testimony based on its 6 & 6 update for revenue requirements on September 25, 2009. Based on the updated information, PSE&G claimed that its test year data justified an electric distribution base rate increase of approximately $147.02 million and a gas distribution base rate increase of approximately $105.95 million. On October 16, 2009, the Company filed its updated cost of service and rate design schedules based upon its 6 & 6 updates. Rate Counsel and MEG filed their direct testimonies and supporting schedules on November 19, 2009. On December 30, 2009, PSE&G filed its rebuttal testimonies and supporting schedules. On January 25, 2010, Rate Counsel submitted supplemental direct testimony on pension issues. The Company filed its updated revenue requirements, billing determinants, and cost of service and rate design testimonies based on its 12 & 0 updates on January 29, 2010, February, 5, 2010 and February 12, 2010, respectively. Subsequently, on February 23, 2010 and March 1, 2010, PSE&G filed revised direct testimony and supplemental direct testimony of certain witnesses.

On November 20, 2009, a notice of the filing including the 6 & 6 update was published in newspapers of general circulation in PSE&G's electric and gas service territories. Public hearings were conducted on December 14, 2009, December 15, 2009, and December 18, 2009 at 3:30 pm and 5:30 pm in Hackensack, Mount Holly, and New Brunswick, respectively. Three members of the public attended.

During an extensive review of this petition, Board Staff ("Staff"), Rate Counsel, MEG, and NJLEUC propounded over 1,700 discovery requests on PSE&G. The Company answered all the requests.

Evidentiary hearings for this matter were held at the OAL on February 1, 2, 18, 19, 24 and March 2 through 4, 2010. Initial Briefs were filed on March 19, 2010 and Reply Briefs were filed on April 5, 2010.

THE PROPOSED STIPULATION [1]

According to the information provided to the Board, the Company, Rate Counsel, Staff, MEG, and NJLEUC (collectively, the "Parties") held numerous in person and telephonic meetings to discuss settlement of this matter. On May 27, 2010, PSE&G, Rate Counsel, Staff, and NJLEUC (collectively, the "Signatory Parties") executed a stipulation of settlement ("Stipulation"), including the following key provisions:

> The Signatory Parties agree that electric distribution revenues should be increased by $73.544 million based on an electric rate base of $3.75 billion and that gas distribution revenues should be increased by $26.456 million based on a gas rate base of $2.27 billion on an annual basis, effective for service rendered on and after the effective date of a written Board Order approving the Stipulation. The Signatory Parties agree that an appropriate return on common equity for this Stipulation is 10.3%. The Signatory Parties agree that an appropriate overall rate of return based upon a return on common equity of 10.3% is 8.21% with a 51.2% common equity component. As a result of this Stipulation including the change in Capital Adjustment Charges ("CAC"), the annual bill for the class average residential electric customer using 780 kWh per summer month and 7,360 kWh annually will increase from $1,385.72 to $1,398.12, an increase of $12.40, or 0.89%. The annual bill for the class average residential gas heating customer using 160 therms per winter month and 1,050 therms annually will increase from $1,428.60 to $1,442.92, an increase of $14.32, or 1.00%.

2. The Company agrees that future distribution base rate filings will be made on a combined electric and gas basis.

3. PSE&G has withdrawn its request for a Pension Expense Tracker.

4. PSE&G has withdrawn its request for an expanded Infrastructure Program.

5. The Signatory Parties agree that the Company shall recover the deferred costs incurred during the 2009 test year that were associated with the implementation of its Customer Care System. Said Customer Care System 2009 test year deferred costs, in the amount of $23.52 million, shall be amortized over four (4) years, at an annual rate of $5.88 million. The Company shall not recover any carrying costs associated with the

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

Customer Care System deferred 2009 test year costs. The Company shall not recover any deferred costs associated with its implementation of the Customer Care System that were incurred prior to the test year.

6. There are no changes to the Company's electric depreciation rates and gas depreciation rates.

7. The Signatory Parties agree that PSE&G's electric and gas Qualifying Projects placed in service through December 31, 2009 for its current, BPU-approved Infrastructure Program, BPU Docket Nos. EO09010049 and GO09010050, shall be rolled into the Company's electric and gas base rates as of the effective rate date. The specific Qualifying Projects and associated dollar amounts that will be rolled in to electric and gas base rates are set forth in Attachment A, pages 1-2 to the Stipulation. In accordance with paragraphs 21-22 of the stipulation in the above referenced Infrastructure Program dockets, CACs set in the Decision and Order dated December 22, 2009 will be recalculated, net of the capitalized projects rolled into the Company's base rates through December 31, 2009. The ratemaking treatment of any Infrastructure Program expenditures not rolled into rate base at the conclusion of this stipulated base rate case proceeding as set forth in Attachment A to the Stipulation, will be governed by the Decision and Order dated December 22, 2009 and the Order dated April 28, 2009 in the above-referenced CAC dockets.

   Also, in accordance with paragraphs 21 and 22 of the Stipulation and the April 28, 2009 Board Decision and Order Approving Stipulation in Docket Nos. EO09010049 and GO09010050, six months prior to the anticipated completion of all of the Qualifying Projects, the base rates established will be reopened for the sole purpose of considering base rate increases for electric and gas related to the inclusion in rate base of the net amounts capitalized for the remaining Qualifying Projects. In addition, after all of the actual net amounts capitalized for all of the remaining Qualifying Projects are moved into rate base and base rate revenues are increased, the electric and gas CAC rates and tariffs will be recalculated to bring the balance to zero over a reasonable period of time and such rates and tariffs will terminate upon reaching a zero balance. Accordingly, the within Petition will remain open for such purpose, including appropriate prudence review.

8. The Signatory Parties agree that the Company's CAC rates shall be provisionally changed to recover $11.46 million for the period June 1, 2010 through December 31, 2010 ($10.74 million for electric and $0.72 million for gas), as set forth in the rate design detailed in Attachment A, pages 3-5 to the Stipulation. The Company's CAC rates shall be provisionally changed as set forth in Attachment A, pages 6-9 to the Stipulation, subject to refund with interest as defined in the April 28, 2009 Board Order for any over/under collections.

9. In the Company's last gas distribution base rate case, BPU Docket No. GR05100845, the parties therein agreed that the Company would amortize the accumulated depreciation reserve associated with Cost of Removal ("COR") at an annual rate of $13.2 million. This $13.2 million annual rate amortization would continue for a period of sixty (60) months, beginning with the implementation of the new base rates resulting from that prior gas distribution rate case. This sixty-month amortization period will expire in October 2011. The Company agrees not to change the rates for this expiring amortization without BPU approval.

10. The Signatory Parties agree that the Company shall file with the Secretary of the BPU and provide copies to the Director of the BPU's Division of Customer Assistance, the Director of the BPU's Division of Energy and the Director of Rate Counsel quarterly reports containing the following eight (8) customer service metrics which metrics will be measured on a monthly basis: 1. Average Speed of Answer (ASA), with a benchmark of eighty percent (80%) of telephone calls answered in thirty (30) seconds from time customer asks for a customer service representative and the customer service representative answers the telephone; 2. Abandoned Call Percentage (ACP), with a benchmark of five percent (5%) or fewer telephone calls abandoned; 3. Speed of Customer Representative Response in Seconds: Measure: Average speed of answer in seconds, Benchmark: Track and monitor only; (Defined as: Average time in seconds it takes for a customer to reach a customer service representative); 4. Percentage of meters read on cycle with a benchmark of ninety five percent (95%); 5. Customer Rebills, with a benchmark of twenty (20) or fewer rebills per one thousand (1,000) customers; 6. Gas Leak/Odor Response Time, with a benchmark of ninety five percent (95%) of gas leak/odor telephone calls responded to within sixty (60) minutes with actual response time and reason for delay if response exceeds 60 minutes; 7. Service appointments met with a ninety five percent (95%) benchmark for the following categories: meter installation, service disconnects and reconnects, billing investigation, initial and final meter reads; and 8. BPU Complaints, with a benchmark of less than one (1) complaint to the BPU per one thousand (1,000) customers. Attachment B to the Stipulation sets forth the specific detail on these customer service metrics.

    Prior to issuance of the quarterly report, the Company agrees to meet with Rate Counsel and BPU Staff to discuss the contents of the quarterly report. The quarterly reporting will begin after the end of the first full calendar quarter following the issuance of a written final BPU order approving the Stipulation. For example, assuming a written final BPU Order is issued in June 2010, the Company's first quarterly report will be due after the end of the third quarter of 2010 (i.e. after September 30, 2010) and will include data for the third quarter of 2010. The quarterly report will be filed within thirty days after the end of the quarter.

11. The Signatory Parties agree to the Company's implementation of a Gas Weather Normalization Clause, as set forth in Attachment C to the Stipulation.

12. The Signatory Parties agree that the Margin Adjustment Charge ("MAC") unrecovered balance along with its corresponding interest up to the date that new base rates go into effect will be amortized and recovered through the MAC mechanism over sixty (60) months (defined as the "Prior MAC Balance"). Interest on this portion of the MAC balance once new base rates go into effect will accrue at half of the authorized MAC interest rate. The Prospective MAC Balance will accrue two way interest in the same manner as the existing MAC balance. During the month that new base rates are implemented, the unrecovered MAC balances, accrued interest, revenues, expenses and amortization will be pro rated appropriately based upon the number of days in the month before and after new base rates go into effect. The new MAC rate effective with new base rates is $0.000000/therm. Prospectively, the Company will make annual MAC filings commencing with the next BGSS filing. The MAC filing will be made commencing June 2011 with the BGSS filing with a proposed rate effective date of October 1, 2011

13. The Signatory Parties agree that twenty-year (20) weather data will be used to define normal weather for the purposes of the gas weather normalization clause.

14. The Signatory Parties agree that the Company will utilize the electric rate design set forth in Attachment D to the Stipulation. In its next distribution base rate case petition, the Company will submit at the time of its filing a cost of service study ("COSS") based on the directions in discovery Exhibit S-63 (S-PRD-53 Revision 2) as clarified in Staff's Initial Brief submitted in the Company's last electric distribution base rate case, BPU Docket No. ER02050303. All parties will be free to submit any number of alternative cost of service methodologies for the Board's consideration in future cases. The Company and any signatory to the Stipulation will have the right to file and support any COSS method it considers appropriate. Each party reserves its right to request that adjustments be made to the Cost of Service Studies submitted in that proceeding.

15. The Signatory Parties agree that the Company will utilize the gas rate design set forth in Attachment E to the Stipulation. In its next distribution base rate case petition, the Company agrees to file a cost of service study using the peak and average methodology for gas distribution. The average portion will be 62.66% and the peak portion will be 37.34%. The Company and any signatory to the Stipulation will have the right to file and support any COSS method it considers appropriate. Each party reserves its right to request that adjustments be made to the Cost of Service Studies submitted in that proceeding.

16. PSE&G has withdrawn its request for approval of changes to its tariff regarding sub-metering which changes were set forth in the Company's petition. PSE&G has modified its current tariff language to reflect the BPU's current definitions of sub-metering and check-metering as reflected in BPU Docket No. AO05080734. PSE&G has withdrawn its check-metering petitions pending before the Board in docket numbers ET07010035 and GT07010036.

17. PSE&G has withdrawn its smart growth petition pending before the Board in Docket Number AX03120973.

18. The Signatory Parties agree that the Company's existing Late Payment Charge will be applied after thirty (30) days in lieu of the present forty-five (45) days. Residential customers are not subject to a late payment charge.

19. The Signatory Parties agree that the Company's electric reconnection charge shall be increased to $45.00 from the current rate of $20.00 and the Company's gas reconnection charge shall be increased to $45.00 from the current rate of $20.00.

20. The Signatory Parties agree that the Company's electric field collection charge shall be increased to $30.00 from the current rate of $16.00 for Commercial and Industrial customer classes only. The Company's gas field collection charge shall be increased to $30.00 from the current rate of $16.00 for Commercial and Industrial customer classes only. There shall be no electric field collection charge and no gas field collection charge for its Residential customer class.

21. The Signatory Parties agree that the proposed changes to the Company's electric and gas tariffs, B.P.U.N.J. No. 15, Electric, and B.P.U.N.J. No. 15, Gas, shall be adopted. Attachment F to the Stipulation shows the tariff language changes. The rates contained in these tariff sheets are for illustrative purposes only. The electric rate design and the gas rate design, shown in Attachment D and Attachment E, respectively, reflect the

revenue requirement agreed to by the Signatory Parties. The Company will file tariffs in compliance with the terms set forth in the Stipulation.

22. The Signatory Parties hereby state their support for a filing by PSE&G requesting a separate generic Board proceeding within sixty (60) days of issuance of a written final Board Order in this proceeding to address issues on a state-wide basis, relating to a Consolidated Income Tax Adjustment. The establishment of a generic proceeding does not represent the expression of a position by any party to this Stipulation with respect to the merits of any of the positions raised by the Signatory Parties in this proceeding. The Signatory Parties reserve all of their rights in any subsequent proceeding to take any position they deem appropriate, to make any arguments they deem appropriate and to offer any alternative proposals. The outcome of the generic proceeding will not affect the rates set forth in the Stipulation.

23. The Signatory Parties hereby recommend that the Board establish a separate, generic Board proceeding to address issues on a state-wide basis, relating to the provision of discounted gas utility distribution rates and contracts based upon a customer's ability to by-pass the utility's gas distribution system and the applicability of the Societal Benefit Charge ("SBC") to such instances of bypass potential. The recommendation of a generic proceeding does not represent the expression of a position by any party to the Stipulation with respect to the merits of any of the positions raised by the Signatory Parties in this proceeding. The Signatory Parties reserve all of their rights in any subsequent proceeding to take any position they deem appropriate, to make any arguments they deem appropriate and to offer any alternative proposals.

24. The Signatory Parties agree that the ALJ should issue an Initial Decision accepting the terms set forth in the Stipulation as well as issue a separate decision deciding the issues raised by MEG and NJLEUC, including but not limited to (1) the rate for gas transportation service charged to PSEG Power, both prospectively and for prior periods, (2) the applicability of the SBC, Regional Greenhouse Gas Initiative ("RGGI") and CAC surcharges to PSEG Power, both prospectively and for prior periods, and (3) the recalculation of Rate Schedule Non-Firm Transportation Gas Service ("TSG-NF") rates, SBC, RGGI and CAC surcharges, both prospectively and for prior periods, to include gas volumes transported for PSEG Power and taking into consideration the counter arguments briefed by any party.

25. The Signatory Parties recommend that the Stipulation be considered by the Board at its June 7, 2010 regularly scheduled Agenda Meeting. The Signatory Parties further agree that the new electric distribution rates and gas distribution rates resulting from the Stipulation should be effective upon approval of the Stipulation by the Board on June 7, 2010 or upon such other effective date that the Board may determine, whichever is later.

26. The Signatory Parties recommend that the Board consider the Stipulation and the Stipulation of Settlement regarding the Market Transition Charge ("MTC") proceeding[2] at the same June 7, 2010 agenda meeting.

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[2] In The Matter of the Deferred Balances Audit of PSE&G, Phase II, BPU Docket Number EX02060363 & EA02060366, OAL Docket Number PUC 03127-07.

On May 27, 2010, a conference call was held between the parties and ALJ Braswell to discuss the process by which ECG would be able to submit its opposition to the Stipulation. At the conclusion of the call, ECG submitted a letter to ALJ Braswell objecting to the ALJ's expressed intention to issue an initial decision without allowing additional time for ECG to submit written objections, arguing that such action was not in accordance with law since the Stipulation was not unanimous. On May 28, 2010, PSE&G submitted in a letter in response to ECG's supporting the issuance of the initial decision without further delay.

INITIAL DECISION

On May 28, 2010, ALJ Braswell issued an Initial Decision in the proceeding. ALJ Braswell found that with respect to the Stipulation, the Signatory Parties voluntarily agreed to a settlement in this matter, that the Stipulation is consistent with the law and disposes of all issues in controversy, with the exception of the issues raised by MEG and NJLEUC, specifically: (1) the rate for gas transportation service charged to PSEG Power, both prospectively and for prior periods, (2) the applicability of the SBC, RGGI, and CAC surcharges to PSEG Power, both prospectively and for prior periods and (3) the recalculation of Rate Schedule TSG-NF rates, SBC, RGGI, and CAC surcharges, both prospectively and for prior periods, to include gas volumes transported for PSEG Power.

The ALJ's findings and conclusions regarding the ECG issues and the terms of the Stipulation as they apply to the Company's gas division will be addressed by the Board at a later date. By letter dated June 2, 2010, the Company requested that the Board address the Stipulation and Initial Decision as applied to the electric division, pending the filing of exceptions and reply exceptions to the gas related issues, since there were no objections to the portions of the settlement related to the Company's electric division. The Signatory Parties confirmed their consent to this process. By letter dated June 3, 2010, ECG indicated that it would not object to the Board's consideration of the electric base rates provided that any order dealing with those rates was issued "without prejudice to the opportunity of the ECG to file its exceptions, to prosecute them in full, and to have them considered at the Board's meeting of June18, 2010."

DISCUSSION AND FINDINGS

This Board Order considers the Stipulation executed on May 27, 2010 by the Signatory Parties and ALJ Braswell's May 28, 2010 Initial Decision in this proceeding solely with respect to those provisions as they pertain to the electric ratepayers and PSE&G's electric division. All other provisions pertaining to gas ratepayers and PSE&G's gas division in the Stipulation and Initial Decision will be considered by this Board through a separate Decision and Order at a later date.

In evaluating a proposed settlement, the Board must review the record, balance the interests of the ratepayers and the shareholders, and determine whether the settlement represents a reasonable disposition of the issues that will enable the Company to provide its customers in this State with safe, adequate and proper service at just and reasonable rates. In re Petition of Pub. Serv. Elec. & Gas, 304 N.J. Super. 247 (App. Div.), cert. denied, 152 N.J. 12 (1997). The Board recognizes that the Signatory Parties worked diligently to negotiate a compromise that attempts to meet the needs of as many stakeholders as possible. The Board further recognizes that the Stipulation represents a balanced solution considering the many complex issues that were addressed during the proceeding. Therefore, based on the Board's review and consideration of the record in this proceeding including the Stipulation and Initial Decision as well as the petition and testimony, the Board **HEREBY FINDS** the Initial Decision and the Stipulation to be reasonable, in the public interest and in accordance with the law with respect to the electric ratepayers and PSE&G's electric division issues. Therefore the Board **HEREBY ADOPTS** ALJ Braswell's Initial Decision and the Stipulation as its own, as if fully set forth herein as they pertain to the electric ratepayers and PSE&G's Electric Division.

Although the Company made a combined electric and gas filing in this matter, prior Board decisions have separately considered base rate petitions for the electric and gas divisions[3]. In light of the request made by PSE&G in its June 2, 2010 letter, coupled with the fact that neither MEG nor any Signatory Party opposes the request, the Board **FINDS** it appropriate to issue a separate decision on the electric rates only since the opposition to the Stipulation deals with the gas division of PSE&G. The Board notes that as part of the Stipulation, the Company has agreed to file future distribution base rate filings on a combined electric and gas basis.

The Board **FINDS** that the revenue requirement increases to the electric distribution rates are fair and reasonable and reflect the increase in capital investments for infrastructure and increases in other costs and expenses that PSE&G is incurring to provide safe, adequate and reliable service. The Board notes that the stipulated increase in electric distribution rates of $73.544 million is substantially less than the $147.02 million sought by the Company in its 6 & 6 update to the petition. This Board is, however, cognizant of the impact of any increase on New Jersey ratepayers during this time of continued economic stress and volatile energy prices. To that end, the Board **FURTHER FINDS** that a system average increase applied to all rate classes as agreed to in the Stipulation should minimize the cost burden on any one class of customers; it would effect, in essence, an equal sharing of the necessary increase in the Company's revenues. Thus, the Board **CONCURS** with the across the board interclass allocation method applied to set rates under the Stipulation.

The Board also **FINDS** that the appropriate return on common equity for PSE&G is 10.3 percent with a 51.2 percent common equity component in the capital structure. The 10.3 percent return on common equity is consistent with other recent Board decisions, and fairly balances the interests of ratepayers and shareholders. In addition, the Board notes that this return and capital structure supports solid investment grade credit ratings to assure that the Company will be able to provide safe, adequate and proper service in a financially efficient manner.

The Board **HEREBY NOTES** PSE&G's withdrawal of its request for a Pension Expense Tracker and an expanded Infrastructure Program finding these withdrawals to be in the public interest and thus, reasonable and prudent.

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[3]IMO 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 Electric 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, BPU Docket No. ER02050303, Final Order dated April 22, 2004.

IMO the Petition of Public Service Electric and Gas Company for Authority to Revise its Gas Property Depreciation Rates AND IMO the Petition of Public Service Electric and Gas Company for Approval of an Increase in Gas Rates and for Changes in the Tariff for Gas Service B.P.U.N.J. No 12, Gas Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, BPU Docket NO. GR01050297 and GR01050328, Order dated January 9, 2002.

IMO the Petition of Public Service Electric and Gas Company for Approval of an Increase in Gas Rates, Depreciation Rates for Gas Property and for Changes in the Tariff for Gas Service, BPU Docket No. GR05100845, Order dated November 9, 2006.

The Board **HEREBY DIRECTS** Staff to close PSE&G's petition with respect to check metering in Docket No. ET07010035.

The Board **HEREBY DIRECTS** that the electric rates resulting from the Stipulation become effective for service rendered on and after the date of this Order. With respect to the changed language in the electric tariff sheets attached to the Stipulation, the Board **FINDS** such language changes to be consistent with the Board's regulations, and therefore, in the public interest. The Board **HEREBY DIRECTS** the Company to file compliance electric tariff sheets consistent with the terms of this Order within the next five (5) business days.

The Company's costs will remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

This Decision and Order is issued without prejudice to the rights of the Parties to file exceptions and replies to exceptions to the Initial Decision as it pertains to PSE&G's gas division and gas related issues.

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

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

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 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 AND FOR APPROVAL OF A GAS WEATHER NORMALIZATION CLAUSE; A PENSION EXPENSE TRACKER AND FOR OTHER APPROPRIATE RELIEF	)	DECISION AND ORDER ADOPTING INITIAL DECISION WITH MODIFICATIONS FOR GAS DIVISION DOCKET NO. GR09050422 OAL DKT NO. PUCRL-07599-2009N

APPEARANCES:

Frances I. Sundheim, Esq., Andrew K. Dembia, Esq., John A. Hoffman, Esq., Matthew Weissman, Esq., Anne S. Babineau, Esq., and **Hesser G. McBride, Esq.**, (Wilenz, Goldman, & Spitzer, P.A.) on behalf of Public Service Electric and Gas Company

Ami Morita, Esq., Felicia Thomas-Friel, Esq., Diane Schulze, Esq., Sarah H. Steindel, Esq., Judith Appel, Esq., and **James Glassen, Esq.**, on behalf of the Department of the Public Advocate, Division of Rate Counsel (**Stefanie A. Brand, Esq.,** Acting Public Advocate and Director)

Caroline Vachier, Alex Moreau, and **Jessica L. Campbell,** Deputy Attorneys General, on behalf of Staff of the New Jersey Board of Public Utilities (**Paula T. Dow,** Attorney General of New Jersey)

Ira G. Megdal, Esq., and **Stacy A. Mitchell, Esq.** on behalf of the Electric Cogeneration Customers (Cozen O'Connor)

Steven Goldenberg. Esq. (Fox Rothschild, LLP), and **Paul Forshay, Esq.** (Sutherland, Asbill, and Brennan LLP), on behalf of the New Jersey Large Energy Users Coalition

BY THE BOARD:

By Order dated June 7, 2010, the New Jersey Board of Public Utilities ("Board" or "BPU") approved a Stipulation of Settlement ("Stipulation)" and an Initial Decision issued by Administrative Law Judge ("ALJ ") Walter M. Braswell as they related to the electric ratepayers of Public Service Electric and Gas Company's ("PSE&G" or "Company") and its Electric Division only. By this Decision and Order, the Board considers the Stipulation and Initial Decision rendered in this matter as they pertain to PSE&G's gas ratepayers and its Gas Division only; exceptions to the Initial Decision filed by PSE&G, the New Jersey Large Energy Users Coalition ("NJLEUC") and a group of electric cogeneration customers consisting of Bayonne Plant Holding, LLC, Camden Plant Holding, LLC, Newark Bay Cogeneration Partnership, LP and Elmwood Park Power, LLC (collectively referred to as "MEG" or "ECG"); and reply exceptions to the Initial Decision filed by PSE&G, ECG, NJLEUC, and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel").

BACKGROUND

While described in the June 7 Order, relevant background is repeated here to the extent needed to provide the context for this decision.

Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, on May 29, 2009, PSE&G filed a petition with the Board seeking to increase its electric distribution base rates by approximately $133.72 million, and its gas distribution rates by approximately $96.92 million. The test year was based on the twelve months ending December 31, 2009, and contained three months of actual data and nine months of projected data. In addition, the Company also sought approval of a gas weather normalization clause, a pension tracker, an expansion of the BPU approved Capital Infrastructure Investment Program ("Infrastructure Program"), as well as other tariff changes.

The petition was transmitted to the Office of Administrative Law ("OAL") on July 8, 2009, and was assigned to ALJ Walter M. Braswell. A pre-hearing order was issued by ALJ Braswell on August 21, 2009, which established certain filing dates and scheduled evidentiary hearings during dates in January, February, and March 2010.

On August 7, 2009, a motion to intervene was filed by NJLEUC which was granted by ALJ Braswell in the pre-hearing order, subject to the condition that NJLEUC submit a list identifying its members who are currently distribution customers of PSE&G and were actively participating in this proceeding. On September 23, 2009, MEG filed a motion to intervene in this matter. On October 29, 2009, ALJ Braswell issued an order granting MEG's motion to intervene. On January 5, 2010, NJLEUC furnished its membership list in compliance with the ALJ's Order.

Direct and rebuttal testimony was filed by the Company, Rate Counsel, and MEG. NJLEUC did not file testimony. The Company filed its direct testimony and supporting schedules on May 29, 2009, and its revised direct testimony based on updated information consisting of six months of actual data and six months of projected data ("6 & 6 Update") for revenue requirements on September 25, 2009. Based on the updated information, PSE&G claimed that its test year data justified an electric distribution base rate increase of approximately $147.02 million and a gas distribution base rate increase of approximately $105.95 million. On October 16, 2009, the Company filed its updated cost of service and rate design schedules based upon its 6 & 6 Update. Rate Counsel and MEG filed their direct testimonies and supporting schedules on November 19, 2009. On December 30, 2009, PSE&G filed its rebuttal testimonies and supporting schedules. On January 25, 2010, Rate Counsel submitted supplemental direct testimony on pension issues. The Company filed its updated revenue requirements, billing determinants, and cost of service and rate design testimonies based on its updated information consisting of twelve months of actual data and no projected data ("12 & 0 Update") on January 29, 2010, February, 5, 2010 and February 12, 2010, respectively. Subsequently, on February 23, 2010 and March 1, 2010, PSE&G filed revised direct testimony and supplemental direct testimony of certain witnesses.

On November 20, 2009, a notice of the filing including the 6 & 6 Update was published in newspapers of general circulation in PSE&G's electric and gas service territories. Public hearings were conducted on December 14, 2009, December 15, 2009, and December 18, 2009 at 3:30 pm and 5:30 pm in Hackensack, Mount Holly, and New Brunswick, respectively. Three members of the public attended.

Evidentiary hearings for this matter were held at the OAL on February 1, 2, 18, 19, 24 and March 2 through 4, 2010. Initial Briefs were filed on March 19, 2010 and Reply Briefs were filed on
April 5, 2010.

Litigated Positions of the Parties

Below is a summary of the Parties' litigated positions on the ECG and NJLEUC issues, as delineated in Initial and Reply Briefs.[1]

ECG/MEG

In its Initial Brief, MEG states that PSEG Power and ECG members are similarly situated: they are large volume customers who receive gas transportation service from PSE&G; they operate gas-fired combined cycle electric generating facilities throughout the State and within PSE&G's service territory; and they compete directly against one another to sell power in the market. MEG argues that despite such similarities, the rate paid and to be paid by ECG under the TSG-NF rate is more than three times as high as the rate paid by PSEG Power. (Id. at 2). PSEG Power pays a rate that is not a tariff rate or a negotiated rate. Rather, the rate currently applicable to PSEG Power was set in the Board's 2007 Order in the Company's annual BGSS proceeding[2]. Specifically PSEG Power pays a flat rate of approximately $.425 per dth for gas transportation service compared to the proposed TSG-NF of $1.33 per dth[3]. PSEG Power pays no monthly customer service charge, SBC, RGGI, or CAC. (Id at 2) In fact, PSEG Power is not paying PSE&G for any balancing charges. (Id. at 14). According to MEG, PSEG Power is also not subject to the rules and regulations in PSE&G's tariff, a written service agreement or balancing provisions. (Id. at 7). ECG pays a distribution charge, a customer service charge, the SBC, the RGGI and the CAC charges, and is subject to balancing charges under the TSG-NF. (Id. at 13-14).

MEG argues that PSE&G has failed to meet its burden of demonstrating that its proposed rates are just and reasonable, and further argues that PSE&G's TSG-NF rate is unduly discriminatory on its face and as applied. MEG accuses PSE&G of acting unlawful by providing service to PSEG Power at a substantially reduced cost in clear violation of New Jersey law regarding affiliate relations, causing the preferential rate and service provided to PSEG Power to create significant competitive distortions in PJM's energy and capacity markets, leading to out-of-merit order dispatch of less efficient resources, wasting energy and increasing air pollution, all of which are contrary to State policy. (Id. at 2).

MEG continues to argue that, even absent discrimination, the TSG-NF rate is not just and reasonable. The proposed TSG-NF rate is not justified on cost of service principles and it is inconsistent with the value of the service provided to customers, especially in comparison to

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[1] For each party,"IB" refers to the intial brief, and "RB" refers to the reply brief.
[2] I/M/O Public Service Electric and Gas Company's 2006/2007 Annual BGSS Commodity Charge Filing, BPU Docket No. GR06050409, Order dated July 17, 2007 (herein referred to as the "2007 BGSS Order")
[3] Based upon the 12&0 Update submitted by PSE&G in the proceeding.

other similarly situated customers. Customers taking service under the TSG-NF rate, compared to PSEG Power, obtain less value but at a higher price.

Although PSE&G identified three pricing options that have been historically applied to electric generation customers, Cogeneration Interruptible Service ("CIG"), TSG-NF tariff and an agreement in lieu of bypass, MEG argues that PSE&G failed to apply any one of them when setting its affiliate's rate. Although PSE&G testified that the rate paid by PSEG Power was a negotiated rate with Rate Counsel and Board Staff, PSEG Power was not even a party to the so called negotiations and never discussed a bypass threat with PSE&G. Thus, there was no basis for a discounted rate to apply where no bypass was threatened. By contrast, MEG argues that despite ECG's viable bypass, PSE&G denied ECG's request for a negotiated rate. (Id. at 19-20).

MEG argues that ECG was forced to take service under the existing TSG-NF tariff at a substantially higher rate than it was previously paying and at a substantially higher cost than the rate paid by PSEG Power, making the Bayonne facility less competitive in the energy market and causing a decline in run time resulting in a $2.5 million decrease in gross margins for 2009 as compared to 2008. (Id. at 5) Despite ECG's reduced run times, MEG argues that due to the favorable treatment by PSE&G, PSEG Power's facilities, including the less efficient ones, are up and running and selling power profitably into the market. (Id. at 6).

According to MEG, the preferential terms and preferential administration of the PSEG Power rate enables it to derive an economic benefit of more than $78 million per year. (Id. at 10). MEG concludes that PSEG Power's generating units dispatch more often and realize significantly higher energy revenues compared to those generating units that would have been dispatched but for PSEG Power's lower fuel cost. (Id. at 27). Thus, less efficient units, like those of PSEG Power paying preferential rates, will be dispatched without regard to the heat rate merit order. (Id. at 28).

MEG argues that in the Board's prior orders, which PSE&G has represented as establishing the PSEG Power rate, the Board did not order that PSE&G be precluded from increasing the rate charged to PSEG Power. In fact, MEG argued that no order prevented PSE&G from offering the same rates and terms of service to other gas transportation customers. (Id. at 10).

By way of background, MEG provided a history of the rate charged by PSE&G to PSEG Power, tracing it back to 1994 prior to Electric Discount & Energy Competition Act ("EDECA") and competition. In the 1999 Restructuring Order, wherein PSEG Power (formerly GENCO) was referenced, the Board ordered that PSE&G continue to supply gas transportation service in accordance with the Stipulation approved in the 1995 Order. According to ECG, the order did not prohibit PSE&G from proposing a higher rate for service to PSEG Power.

MEG asserts that PSE&G would pay $78 million more under TSG-NF which in turn would be credited against the Basic Gas Supply Service ("BGSS") Clause as a reduction to purchased gas costs, and thus be a benefit to other natural gas customers. MEG states that the BGSS customers are deprived of this benefit as a result of PSE&G's discriminatory rate afforded PSEG Power. (Id. at 22).

MEG also claims that PSE&G failed to provide proper notice of the change in the PSEG Power rate, which it maintains is an increase in distribution base rates, in the Company's 2007 annual BGSS proceeding. Therefore, MEG argues that PSEG Power's rate set in that proceeding is void *ab initio*. (Id. at 26).

MEG proposes that all electric generators taking service from PSE&G, on an interruptible basis, including PSEG Power, be placed on its proposed EGS-NR rate schedule so that PSEG Power will be subject to the same price and non-price terms as other electric generators. More specifically MEG recommends that all generators should be required to take service under the proposed EGS-NR tariff immediately, and that all existing, negotiated contracts should be moved to the new tariff upon expiration of the contracts. (Id. at 30).

MEG argues that arrangement between PSE&G and PSEG Power violates N.J.A.C. 14:4-3, the affiliate relations regulations and is contrary to law and should subject PSE&G to sanctions. (Id. at 21).

In its reply brief, MEG asserts that it has proven two separate *prima facie* cases that PSE&G's TSG-NF Rate Schedule, as proposed in this case, is unlawfully discriminatory; 1) facially unlawful; and 2) unlawful as applied, both because of undue discrimination. MEG identifies two elements of unlawful discrimination: 1) the creation of two classes of similarly situated customers; 2) providing higher rates or inferior service to one of those classes. (MEG RB at 1).

PSE&G's response by relying on past Board Orders with respect to MEG's allegations of facial discrimination are inadequate according to MEG. (Id. at 2) In addition, MEG asserts that its allegations that the TSG-NF rate is unlawfully discriminatory as applied, is unrebutted by PSE&G. Although ECG contends it made a showing of a verifiable threat of bypass, PSE&G arbitrarily and capriciously rebuffed ECG's efforts, allowing an unfair competitive advantage to its affiliate, PSEG Power. MEG argues that PSE&G and the other parties never refuted these facts and never cross-examined the evidence presented by ECG. Thus, MEG believes that the evidence it presented in this proceeding cannot be ignored. (Id. at 10-12).

MEG argues that only it, and no other party, offered a remedy to the discriminatory conduct of PSE&G, proposing Rate Schedule EGS-NR where PSE&G Power and all other gas transportation customers would be moved to the newly proposed tariff immediately. The only remedy available in the record other than MEG's recommended EGS-NR Rate Schedule would be to subject PSEG Power to the same TSG-NF Terms applicable to other TSG-NF customers. The Reservation Charge that PSEG Power currently pays to PSE&G expires on July 31, 2010. PSE&G should not be allowed to continue the discriminatory rate and terms of service beyond that date. (Id. at 5-6).

PSE&G

The Company argues that the rates that PSE&G was required to charge PSEG Power, as well as the current rate, were approved by a series of Board Orders dating back to 1995.[4] According to PSE&G, the language in the 2007 BGSS Order sets the GRC that PSE&G is required to charge PSEG Power through *at least* July 31, 2010, and therefore this issue does not belong in the instant proceeding. (PSE&G IB at 146, 150). PSE&G argues that the time for NJLEUC and ECG to appeal the Board's Orders in those previous cases has long since passed, since

[4] The relevant Board orders are: I/M/O the Motion of Public Service Electric and Gas Company for Approval to Increase its Levelized Energy Adjustment Clause (LEAC), BPU Docket No. ER94070293, Order dated May 5, 1995; I/M/O PSE&G's Rate Unbundling, Stranded Costs and Restructuring Filings, BPU Docket Nos. EO97070461, EO97070462, and EO97070463, Final Decision and Order dated August 24, 1999 (herein referred to as "Restructuring 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 (herein referred to as "2002 Gas Contracts Order"); and the 2007 BGSS Order.

the parties had, or should have had, actual knowledge of the supply arrangement. (Id. at 149-150).

PSE&G argues that NJLEUC's attempt to retroactively alter the existing rate is based on a misreading of the 2002 Gas Contracts Order, and a failure to recognize that the Board recognized the charge and modified it in 2007. PSE&G submits that the 2002 Gas Contracts Order recognized that PSE&G and its other customers realized substantial benefits from the Requirements Contract. (Id at 147). The Company opposes NJLEUC's request for retroactive ratemaking, stating that it is unsupported and illegal. (Id. at 155). Additionally, PSE&G requests that the Board dismiss NJLEUC's requests for (1) immediate cessation of the GRC, (2) recalculation of the SBC, RGGI, and CAC charges, and (3) for a refund of monies that would have been collected if PSEG Power had been charged the TSG-NF rate. (Ibid.)

With respect to NJLEUC's argument that the Board's Order is unlawful in that it did not impose the SBC as part of the GRC, PSE&G argues that not only does the Board have discretion under EDECA to determine that, in appropriate situations, the rate to be charged to a customer need not include the SBC, but has left in place special service contracts that do not call for the collection of the SBC. (Id. at 152). The Company believes that the Board is and should be free to craft appropriate regulatory policy to save whatever contribution may be provided by a customer who has verifiable bypass options even if it is not sufficient to recover the SBC. (Id. at 153).

While conceding that no analysis has yet been undertaken to determine whether and to what extent PSEG Power has options for bypass that would cause it to consider leaving the PSE&G distribution system entirely, the Company alleges that it is "known that PSEG Power plants are located near interstate pipelines. (Id. at 153). PSE&G estimates that PSEG Power would incur an additional $78,000,000 of charges annually if on the TSG-NF rate, and believes that PSEG Power would seek bypass options if faced with the additional charges. (Ibid.) In keeping with that, PSE&G believes that the only appropriate course is to deny MEG's request for a Board Order determining that the GRC must end. (PSE&G RB at 131).

In addition, the Company argues that it already provides service pursuant to special individual gas service agreements at MEG's Newark Bay and Camden plants and stands ready to provide a special gas transportation service agreement if MEG can provide evidence of economically viable bypass for its other two facilities. (Id. at 125-126). As maintained by PSE&G, the Bayonne facility has no realistic potential for economically viable bypass at this time, as claimed by ECG witness Dennis Clarke. Further, according to the Company, MEG does not even claim that Elmwood Park has a bypass option. (Id. at 127). For these reasons, PSE&G submits that the Board should convene an investigation, with participation from Staff and Rate Counsel, if the Board deems it appropriate, to determine whether MEG's circumstances warrant a rate other than the TSG-NF rate. (Id. at 136).

With respect to ECG's claim that the TSG-NF rate is not justified based on cost of service principles, PSE&G agrees that the TSG-NF rate is not a cost based rate. (Id.. at 129). According to PSE&G, the TSG-NF rate is priced lower than the Transportation Gas Service – Firm ("TSG-F") rate to reflect the fact that these customers are interruptible. (Ibid.).

The Company opposes MEG's proposed tariff, arguing that it is unwarranted and not consistent with proper ratemaking. (Id. at 133). In support of its opposition, PSE&G states that under the new tariff, unlike current company policy for special gas transportation contracts, there would be no need for MEG to provide evidence of a verifiable and economically and physically feasible bypass opportunity. (Ibid.) Citing the closing of the CIG tariff, the Company maintains that there is a shift away from customer-specific tariffs. (Id. at 134). In addition, according to

Company witness Gerald Schirra, "the proposed tariff provides no guidance regarding how the rate would be established between the floor and the ceiling..." (Exhibit P-14-RB, p 7:12-8:3). PSE&G also notes that in the last gas rate case, the Company proposed a similar tariff, which was opposed by Rate Counsel. (PSE&G RB at 135). Furthermore, the Company states that the proposed tariff would require what is likely to be competitively sensitive information to be made pubic in the case of a special agreement with any affiliate of PSE&G, while such information would remain confidential in the case of other special contracts. (Ibid.).

Rate Counsel

Rate Counsel argues that the proposed special tariff to be available only to electric generators taking natural gas distribution service should be rejected based on the record. (RC IB at 94). Citing broad statewide implications that have not been adequately explored in this proceeding, Rate Counsel recommends that consideration of such a tariff should only be undertaken in a proceeding, with notice to all interested stakeholders, in which is can fully evaluate whether this type of tariff is an appropriate means for furthering relevant State policies. (Ibid.)

Rate Counsel further supports the proposition that utility service should be provided without unreasonable discrimination and undue preference. To that end, Rate Counsel recommends that any rate discounts or other preferences granted to MEG or any other PSE&G customer, including any waivers of the SBC, RGGI, and CAC charges, should be considered in a contested proceeding. (Id. at 96). In addition, Rate Counsel asserts that any preferential pricing or other terms of service provided to PSEG Power after July 31, 2010 should be considered by in a contested proceeding before the Board, and any continued preference should be based on specific factual and legal findings. (Id. at 97).

Furthermore, to the extent that any of PSE&G's special contracts with MEG or other generators contain "evergreen" provisions that automatically extend the term of the contract in the absence of an objection by either party, Rate Counsel recommends that the Company be directed to seek Board approval before continuing in any such automatic extensions. (Id. at 96).

In its Reply Brief, Rate Counsel argues that MEG's claim that the Company's TSG-NF rate is "unjust and reasonable, even absent discrimination", it is not supported and is not a sufficient basis for invalidating the Company's TSG-NF rate. (RC RB at 67). Citing to the fact that the TSG-NF rate is not newly proposed in this case, Rate Counsel maintains that it carries a presumption of validity. (Id. at 68). Absent MEG meeting its burden of proof by coming forward with additional evidence in support of its position, Rate Counsel recommends that MEG's position be rejected. (Ibid.).

Board Staff

In its reply brief, Staff asserts that the neither the scope of the 2002 gas contract transfer proceeding, nor the 2007 BGSS proceeding included the intrastate transportation service provided to PSEG Power by PSE&G. (Staff RB at 23). Based on the testimony and other evidence garnered in the instant proceeding, Staff recommended that the status of the GRC be reassessed and ALJ Braswell consider whether (1) PSEG Power's receipt of interruptible gas transportation service pursuant to a non-tariff rate schedule is justified beyond July 31, 2002 on the basis of a Board-approved demonstrated threat of bypass of the PSE&G distribution system; (2) the continued receipt of interruptible gas transportation by PSEG Power through the non-tariff GRC constitutes a competitive advantage to PSEG Power relative to service opportunities afforded other interruptible gas electric generation entities within the PSE&G territory; and (3)

PSEG Power's continued receipt of interruptible gas service should at the conclusion of this proceeding be switched to receipt under rate schedule TSG-NF. (Id. at 23-24). Staff additionally recommended that PSE&G be ordered to quantify and submit to the Board for its consideration in this proceeding, all SBC, RGGI, and CAC annual revenue amounts not recovered by the Company from PSEG Power through the GRC since August 1, 2002. (Id. at 24).

NJLEUC

Arguing that there is no regulatory, policy, contractual or other basis existing to justify the continuing use of the GRC and PSEG Power's nonpayment of the SBC, RGGI, and CAC beyond July, 2002, NJLEUC requested that the OAL and Board take definitive action to remedy what it sees as the significant rate subsidy and competitive issues implicated by PSE&G's continued use of the GRC and PSEG Power's nonpayment of the charges. (Id. at 11). NJLEUC submits that the continuing use of the GRC after July, 2002 violated the terms of the Board's 1999 Restructuring Order and is not justified. (Id. at 40).

Further, in refutation of PSE&G's argument that there are similar discounted "special power arrangements" between six generators and PSE&G in which the associated therms were not included in PSE&G's calculation of the SBC, NJLEUC notes that these arrangements were negotiated as a result of a threatened bypass of the PSE&G system, or because of the existence of a gas supply arrangement that predated EDECA and continued by its terms after EDECA was enacted. (Id. at 45). In stark contrast, NJLEUC argues that the "arrangement" between PSE&G and PSEG Power was neither the result of a threatened bypass or a pre EDECA agreement. INJLEUC questioned whether PSEG Power would have satisfied PSE&G's stringent criteria for a negotiated rate as a result of a bypass threat. (Id. at 46).

NJLEUC also argues that even if the 1999 Restructuring Order established such an agreement between PSE&G and PSEG Power, the gas transportation arrangement contemplated by the 1999 Restructuring Order expired in 2002 and since that time, there has been no filing in which PSE&G affirmatively sought to continue the GRC or excuse PSEG Power from paying the SBC, RGG, or CAC. (Id. at 48).

NJLEUC urged the OAL and the Board to state unequivocally that PSEG Power must be treated the same as any other gas distribution customer or competitor when it comes to the payment of the SBC, RGGI and CAC, and to the inclusion of the gas distribution volumes in the calculation of those charges. (NJLEUC IB at 49). To that end, NJLEUC requested that PSE&G be directed to (i) immediately cease charging PSEG Power the GRC, and to charge an appropriate tariff rate in its place that includes the assessment of the SBC, RGGI, and CAC charges for all volumes of gas delivered to PSEG Power; (ii) recalculate the SBC, RGGI, and CAC charges to include all volumes of gas delivered to PSEG Power since July, 2002; (iii) direct PSE&G to require PSEG Power to place into a fund, established for the benefit of PSE&G's gas customers a surcharge on all volumes delivered to PSEG Power, during the period July 2002 to date, equivalent to the difference between the GRC and the TSG-NF rate, and an amount equivalent to PSEG Power's SBC obligation for the period July 2002 to date, and the RGGI and CAC charges for 2008 and 2009, respectively. (Id. at 11-12).

In its Reply Brief, NJLEUC reasserted the arguments in its Initial Brief, and added rebuttal to PSE&G's argument that NJLEUC was a party to the 2002 proceeding and was aware of the existence of the continued GRC. NJLEUC argues that the group participating in this proceeding did not exist during that time, but its counsel represented another party (Shell) with different interests in that matter. (Id. at 5). However, NJLEUC agues that because PSE&G did not comply with the statutorily mandated notice and other provisions of N.J.S.A. 48:2-21, the necessary conditions precedent to the establishment of the GRC, the rate established is not a proper rate. (Id. at 6).

THE PROPOSED STIPULATION [5]

According to the information provided to the Board, the Company, Rate Counsel, Staff, MEG, and NJLEUC (collectively, the "Parties") held numerous in person and telephonic meetings to discuss settlement of this matter. On May 27, 2010, PSE&G, Rate Counsel, Staff, and NJLEUC (collectively, the "Signatory Parties") executed a Stipulation. Below are the provisions of the Stipulation as they relate to the gas division and gas ratepayers only [6]:

1. The Signatory Parties agree that gas distribution revenues should be increased by $26.456 million based on a gas rate base of $2.27 billion on an annual basis, effective for service rendered on and after the effective date of a written Board Order approving the Stipulation. The Signatory Parties agree that an appropriate return on common equity for this Stipulation is 10.3%. The Signatory Parties agree that an appropriate overall rate of return based upon a return on common equity of 10.3% is 8.21% with a 51.2% common equity component. As a result of this Stipulation including the change in Capital Adjustment Charges ("CAC"), the annual bill for the class average residential gas heating customer using 160 therms per winter month and 1,050 therms annually will increase from $1,428.60 to $1,442.92, an increase of $14.32, or 1.00%.

2. The Company agrees that future distribution base rate filings will be made on a combined electric and gas basis.

3. PSE&G has withdrawn its request for a Pension Expens e Tracker.

4. PSE&G has withdrawn its request for an e xpanded Infrastructure Program.

5. The Signatory Parties agree that the Company shall recover the deferred costs incurred during the 2009 test year that were associated with the implementation of its Customer Care System. Said Customer Care System 2009 test year deferred costs, in the amount of $23.52 million, shall be amortized over four (4) years, at an annual rate of $5.88 million. The Company shall not recover any carrying costs associated with the Customer Care System deferred 2009 test year costs. The Company shall not recover any deferred costs associated with its implementation of the Customer Care System that were incurred prior to the test year.

6. There are no changes to the Company's electric depreciation rates and gas depreciation rates.

7. The Signatory Parties agree that PSE&G's electric and gas Qualifying Projects placed in service through December 31, 2009 for its current, BPU-approved Infrastructure Program, BPU Docket Nos. EO09010049 and GO09010050, shall be rolled into the Company's electric and gas base rates as of the effective rate

[5] Although described at some length in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.
[6] By Order dated June 7, 2010, the Board approved the Stipulation as it relates to PSE&G's electric ratepayers and its Electric Division only.

date. The specific Qualifying Projects and associated dollar amounts that will be rolled in to electric and gas base rates are set forth in Attachment A, pages 1-2 to the Stipulation. In accordance with paragraphs 21-22 of the stipulation in the above referenced Infrastructure Program dockets, CACs set in the Decision and Order dated December 22, 2009 will be recalculated, net of the capitalized projects rolled into the Company's base rates through December 31, 2009. The ratemaking treatment of any Infrastructure Program expenditures not rolled into rate base at the conclusion of this stipulated base rate case proceeding as set forth in Attachment A to the Stipulation will be governed by the Decision and Order dated December 22, 2009 and the Order dated April 28, 2009 in the above-referenced CAC dockets.

Also, in accordance with paragraphs 21 and 22 of the Stipulation and the April 28, 2009 Board Decision and Order Approving Stipulation in Docket Nos. EO09010049 and GO09010050, six months prior to the anticipated completion of all of the Qualifying Projects, the base rates established will be reopened for the sole purpose of considering base rate increases for electric and gas related to the inclusion in rate base of the net amounts capitalized for the remaining Qualifying Projects. In addition, after all of the actual net amounts capitalized for all of the remaining Qualifying Projects are moved into rate base and base rate revenues are increased, the electric and gas CAC rates and tariffs will be recalculated to bring the balance to zero over a reasonable period of time and such rates and tariffs will terminate upon reaching a zero balance. Accordingly, the within Petition will remain open for such purpose, including appropriate prudence review.

8. The Signatory Parties agree that the Company's CAC rates shall be provisionally changed to recover $11.46 million for the period June 1, 2010 through December 31, 2010 ($10.74 million for electric and $0.72 million for gas), as set forth in the rate design detailed in Attachment A, pages 3-5 to the Stipulation. The Company's CAC rates shall be provisionally changed as set forth in Attachment A, pages 6-9 to the Stipulation, subject to refund with interest as defined in the April 28, 2009 Board Order for any over/under collections.

9. In the Company's last gas distribution base rate case, BPU Docket No. GR05100845, the parties agreed that the Company would amortize the accumulated depreciation reserve associated with Cost of Removal ("COR") at an annual rate of $13.2 million. This $13.2 million annual rate amortization would continue for a period of sixty (60) months, beginning with the implementation of the new base rates resulting from that prior gas distribution rate case. This sixty-month amortization period will expire in October 2011. The Company agrees not to change the rates for this expiring amortization without BPU approval.

10. The Signatory Parties agree that the Company shall file with the Secretary of the BPU and provide copies to the Director of the BPU's Division of Customer Assistance, the Director of the BPU's Division of Energy and the Director of Rate Counsel quarterly reports containing eight (8) customer service metrics which metrics will be measured on a monthly basis.

11. The Signatory Parties agree to the Company's implementation of a Gas Weather Normalization Clause, as set forth in Attachment C to the Stipulation.

12. The Signatory Parties agree that the Margin Adjustment Charge ("MAC") unrecovered balance along with its corresponding interest up to the date that new base rates go into effect will be amortized and recovered through the MAC mechanism over sixty (60) months (defined as the "Prior MAC. Balance"). Interest on this portion of the MAC balance once new base rates go into effect will accrue at half of the authorized MAC interest rate. The Prospective MAC Balance will accrue two way interest in the same manner as the existing MAC balance. During the month that new base rates are implemented, the unrecovered MAC balances, accrued interest, revenues, expenses and amortization will be pro rated appropriately based upon the number of days in the month before and after new base rates go into effect. The new MAC rate effective with new base rates is $0.000000/therm. Prospectively, the Company will make annual MAC filings commencing with the next BGSS filing. The MAC filing will be made commencing June 2011 with the BGSS filing with a proposed rate effective date of October 1, 2011

13. The Signatory Parties agree that twenty-year (20) weather data will be used to define normal weather for the purposes of the gas weather normalization clause.

14. The Signatory Parties agree that the Company will utilize the gas rate design set forth in Attachment E to the Stipulation. In its next distribution base rate case petition, the Company agrees to file a cost of service study using the peak and average methodology for gas distribution. The average portion will be 62.66% and the peak portion will be 37.34%. The Company and any signatory to the Stipulation will have the right to file and support any COSS method it considers appropriate. Each party reserves its right to request that adjustments be made to the Cost of Service Studies submitted in that proceeding.

15. PSE&G has withdrawn its request for approval of changes to its tariff regarding sub-metering which changes were set forth in the Company's petition. PSE&G has modified its current tariff language to reflect the BPU's current definitions of sub-metering and check-metering as reflected in BPU Docket No. AO05080734. PSE&G has withdrawn its check-metering petitions pending before the Board in Docket Numbers ET07010035 and GT07010036.

16. PSE&G has withdrawn its smart growth petition pending before the Board in Docket Number AX03120973.

17. The Signatory Parties agree that the Company's existing Late Payment Charge will be applied after thirty (30) days in lieu of the present forty-five (45) days. Residential customers are not subject to a late payment charge.

18. The Signatory Parties agree that the Company's electric reconnection charge shall be increased to $45.00 from the current rate of $20.00 and the Company's gas reconnection charge shall be increased to $45.00 from the current rate of $20.00.

19. The Signatory Parties agree that the Company's electric field collection charge shall be increased to $30.00 from the current rate of $16.00 for Commercial and Industrial customer classes only. The Company's gas field collection charge shall be increased to $30.00 from the current rate of $16.00 for Commercial and Industrial customer classes only. There shall be no electric field collection charge and no gas field collection charge for its Residential customer class.

20. The Signatory Parties agree that the proposed changes to the Company's electric and gas tariffs, B.P.U.N.J. No. 15, Electric, and B.P.U.N.J. No. 15, Gas, shall be adopted. Attachment F to the Stipulation shows the tariff language changes. The rates contained in these tariff sheets are for illustrative purposes only. The electric rate design and the gas rate design, shown in Attachment D and Attachment E, respectively, reflect the revenue requirement agreed to by the Signatory Parties. The Company will file tariffs in compliance with the terms set forth in the Stipulation.

21. The Signatory Parties hereby state their support for a filing by PSE&G requesting a separate generic Board proceeding within sixty (60) days of issuance of a written final Board Order in this proceeding to address issues on a state-wide basis, relating to a Consolidated Income Tax Adjustment. The Signatory Parties reserve all of their rights in any subsequent proceeding to take any position they deem appropriate, to make any arguments they deem appropriate and to offer any alternative proposals. The outcome of the generic proceeding will not affect the rates set forth in the Stipulation.

22. The Signatory Parties hereby recommend that the Board establish a separate, generic Board proceeding to address issues on a state-wide basis, relating to the provision of discounted gas utility distribution rates and contracts based upon a customer's ability to by-pass the utility's gas distribution system and the applicability of the Societal Benefit Charge ("SBC") to such instances of bypass potential. The Signatory Parties reserve all of their rights in any subsequent proceeding to take any position they deem appropriate, to make any arguments they deem appropriate and to offer any alternative proposals.

23. The Signatory Parties agree that the ALJ should issue an Initial Decision accepting the terms set forth in the Stipulation as well as issue a separate decision deciding the issues raised by MEG and NJLEUC, including but not limited to (1) the rate for gas transportation service charged to PSEG Power, both prospectively and for prior periods, (2) the applicability of the SBC, Regional Greenhouse Gas Initiative ("RGGI") and CAC surcharges to PSEG Power, both prospectively and for prior periods, and (3) the recalculation of Rate Schedule Non-Firm Transportation Gas Service ("TSG-NF") rates, SBC, RGGIand CAC surcharges, both prospectively and for prior periods, to include gas volumes transported for PSEG Power and taking into consideration the counter arguments briefed by any party.

On May 27, 2010, a conference call was held between the parties and ALJ Braswell to discuss the process by which ECG would be able to submit its opposition to the Stipulation. At the conclusion of the call, ECG submitted a letter to ALJ Braswell objecting to the ALJ's expressed intention to issue an initial decision without allowing additional time for ECG to submit written objections, arguing that such action was not in accordance with law since the Stipulation was not unanimous. On May 28, 2010, PSE&G submitted in a letter responding to ECG and supporting the issuance of the initial decision without further delay.

INITIAL DECISION

On May 28, 2010, the Board received ALJ Braswell's Initial Decision in the proceeding. ALJ Braswell found that with respect to the Stipulation, the Signatory Parties voluntarily agreed to a settlement in this matter, that the Stipulation is consistent with the law and disposes of all issues in controversy, with the exception of the Paragraph 24 Issues raised by MEG and NJLEUC.

With respect to the MEG/ NJLEUC issues, ALJ Braswell found:

1) At a minimum, what needs to be considered by the Board in a generic proceeding is whether:

   i. PSEG Power's receipt of interruptible gas transportation service pursuant to a non-tariff rate schedule is justified beyond July 31, 2002 on the basis of a Board-approved demonstrated threat of bypass of the PSE&G distribution system.
   ii. The continued receipt of interruptible gas transportation by PSEG Power through the non-tariff reservation charge constitutes a competitive advantage to PSEG Power relative to service opportunities afforded other interruptible gas electric generation entities within PSE&G territory.
   iii. PSEG Power's continued receipt of interruptible gas service should at the conclusion of this proceeding be switched to receipt under schedule TSG-NF. If PSEG Power can demonstrate a credible bypass threat it may exercise its right to make such application to PSE&G; PSEG Power and PSE&G may in turn petition the Board for consideration of any non-tariff special contract that may result, along with proofs supporting such contract;

2) Consistent with the prohibitions on unreasonable discrimination and undue preference, it has been the Board's longstanding practice to allow special rates only after a contested proceeding, in which the Board makes explicit findings as to the factual justification and legal authority granting the special rate. Any rate discount or other preferences granted to ECG or any other PSE&G customer, including any waivers of the SBC, RGGI, and CAC charges, should be considered in a contested proceeding. Preferences should be granted only if justified by explicit findings of fact, and with proper legal authority as found by the Board. ALJ Braswell recommends that the Board initiate a generic proceeding where all interested parties will have an opportunity to address rate discounts and preferential contracts.

3) The same standard that applies to PSE&G's other natural gas distribution customers should also apply to PSEG Power. Any preferential pricing or other terms of service provided to PSEG Power after July 31, 2010, should be considered in a contested proceeding before the Board. Any continued preference should be based on specific factual and legal findings as outlined above.

4) To the extent any of PSE&G's special contracts with ECG or other generators contain "evergreen" provisions that automatically extend the term of the contract in the absence of an objection by either party, the Company should be directed to seek Board approval before any such automatic extension begins;

5) ALJ Braswell found that ECG's proposed EGS-NR tariff, if implemented, would have broad statewide implications that need to be further explored. ALJ Braswell further stated that as recommended by Rate Counsel in its brief, if the Board wishes to consider the changes recommended by ECG, it should do so only in a proceeding, with notice to all interested stakeholders, so that it can fully evaluate whether a special electric generation tariff such as that proposed by ECG is an

appropriate means for furthering relevant State policies.

By letter dated June 2, 2010, the Company requested that the Board address the Stipulation and Initial Decision as applied to the electric division, pending the filing of exceptions and reply exceptions to the gas related issues, since there were no objections to the portions of the settlement related to the Company's electric division. The Signatory Parties confirmed their consent to this process. By letter dated June 3, 2010, ECG indicated that it would not object to the Board's consideration of the electric base rates provided that any order dealing with those rates was issued "without prejudice to the opportunity of the ECG to file its exceptions, to prosecute them in full, and to have them considered at the Board's meeting of June 18, 2010." By Order dated June 7, 2010, the Board approved the Stipulation and Initial Decision with respect to PSE&G Electric Division and electric ratepayers only. The Order was issued without prejudice to the rights of the Parties to file exceptions and replies to exceptions to the Initial Decision as it pertained to PSE&G's gas division and gas related issues.

Exceptions

PSE&G

On June 10, 2010, PSE&G filed its exceptions to ALJ Braswell's Initial Decision, generally supporting, but taking exceptions to limited portions of the Initial Decision. PSE&G contends that the Board should (1) accept Judge Braswell's Initial Decision approving the Stipulation with respect to the level of the Company's base rates, the rate design and distribution of the rate increase, and other issues resolved in the Stipulation; (2) reject NJLEUC's request to retroactively modify the gas transportation rates applicable to PSEG Power; (3) accept ALJ Braswell's approval of the Stipulation's provision calling for a generic proceeding to address statewide issues, including MEG's proposed tariff; and (4) accept ALJ Braswell's recommendation regarding the need for factual determinations regarding whether changes should be made in the gas transportation rates to PSEG Power and/or MEG, pending the outcome of the generic proceeding.

With respect to ECG's claim that the TSG-NF tariff has been applied in a discriminatory manner and its assertion that ALJ Braswell cannot avoid a finding of discrimination in administration of the TSG-NF Rate, PSE&G argues that this is contrary to the evidence, even with regard to ECG itself.
Furthermore, PSE&G contends that the findings that the rates with respect to PSEG Power were approved by the Board is correct and is dispositive.

The Company takes exception to the Initial Decision to the extent that it suggests that a proceeding be instituted to determine whether retroactive refunds should be ordered potentially beginning in 2002. (Ibid). The Company argues that such action is contrary to the facts and would be unlawful retroactive ratemaking. The Company contends that, since the Board's 2002 Order, the rate paid by PSEG Power has been a component of the consideration for the BGSS requirements gas service under the Board-approved Requirements Contract. Citing previous Board Orders,[7] the Company states that it would violate the prohibitions against retroactive ratemaking for the Board to revise the GRC for any past periods.

With respect to the Board's further review of alternative rate setting, PSE&G believes that the Board should employ the discretion afforded to it to determine whether to waive all or part of the SBC as supported by the language of N.J.S.A. 48:3-60(a). (Id. at 21).

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[7] Elizabethtown Water Company v. New Jersey Bd. Of Public Utilities, 107 N.J. 440, 448 (1987), and the E'town Special Contract Order.

NJLEUC

In a letter filed on June 10, 2010, NJLEUC takes exception to several aspects of ALJ Braswell's Initial Decision.

NJLEUC states that its support of the Stipulation was due to the inclusion of Paragraph 24, which reserved for separate decision certain issues litigated by NJLEUC and MEG regarding the rate treatment PSE&G has afforded its generation affiliate, PSEG Power.[8] (NJLEUC Exceptions at 1-2). NJLEUC asserts that PSEG Power has, since 2002, received an unauthorized, deeply discounted rate for its interruptible gas transportation service and has never paid the non-bypassable SBC, RGGI, or CAC surcharge applicable to other PSE&G natural gas distribution customers. (Id. at 2). NJLEUC contends that, in issuing his Initial Decision, ALJ Braswell departed from the provisions of Paragraph 24 and did not decide the NJLEUC issues, erroneously treating NJLEUC as a settling party as to all issues. NJLEUC states that unless corrected by the Board, the Initial Decision denies it the benefit of the bargained-for separate decision regarding the issues unique to PSEG Power, which were to be decided outside of the generic proceeding established to address certain statewide utility bypass and tax issues. (Id at 5).

NJLEUC argues that ALJ Braswell's finding that the settlement fully disposes of all issues in controversy and is consistent with the law with the exception of the issues raised by MEG misunderstands or ignores the express language in Paragraph 24 of the Stipulation and may incorrectly characterize NJLEUC's issues as having been resolved by the Stipulation. (Id. at 6). NJLEUC recommends that the Board reject the Initial Decision's erroneous finding, and acknowledge that the PSEG Power issues litigated by NJLEUC remain unresolved pending "a separate decision" as contemplated by Paragraph 24 of the Stipulation.

While not taking issue with the convening of a separate generic proceeding to consider state-wide policy regarding utility bypass generally and certain tax issues, NJLEUC states that the PSEG Power issues are unique and ripe for determination by the Board without the need for further proceedings. According to NJLEUC, by recommending a generic proceeding the ALJ committed error because generic proceedings are not convened in contested cases to adjudicate[9] the rights of specific parties or to address past conduct. (Id. at 12). NJLEUC notes that by rejecting the Initial Decision's recommended use of a generic proceeding to address PSEG Power issues, the Board would have two procedural options: (1) remanding the matter to ALJ Braswell to provide the separate decision contemplated by Paragraph 24 of the Stipulation, or (2) deciding the PSEG Power issues now, based on the extensive evidentiary record developed in the OAL. (Id. at 15).

NJLEUC urges the Board to make findings that the rate that PSE&G has charged PSEG Power from August 1, 2002 to date was discriminatory, and the appropriate rate schedule for PSEG Power is the full TSG-NF rate and not the GRC. NJLEUC further urges the Board to require PSE&G to charge PS Power on the appropriate rate, and recalculate all unpaid rates and charges, including the SBC, RGGI and CAC surcharges on gas volumes transported for PS Power from August 1, 2002 to date, and then refund to all PSE&G natural gas distribution customers the difference between the SBC, RGGI and CAC surcharges paid on their gas

[8] On page 7 of NJLEUC's Exceptions to the Initial Decision, it states that "Had the Stipulation not provided for a decision on these matters by the Presiding Judge based on the record compiled in this proceeding, NJLEUC would not have signed, and would have actively opposed, the Stipulation.

[9] N.J.S.A. 52:14B-2(c) defines an "administrative adjudication" to include "any and every final determination, decision or order made or rendered in any contested case."

distribution service during that period and the charges they would have paid pursuant to the recalculated SBC, RGGI and CAC surcharges including PS Power.

NJLEUC states that it would not deny PSEG Power the ability to seek and, if deemed eligible, obtain a bypass-related discount in the future, so long as the playing field for obtaining such discounts is clearly marked and equally applied to all PSE&G gas distribution customers. (Id. at 20). In order to achieve this, NJLEUC envisions that (1) PSEG Power would be placed on equal footing with other TSG-NF customers through the findings and relief urged in NJLEUC Exceptions; (2) prospective standards and procedures for seeking bypass-related discounts are established through the generic proceeding recommended in Paragraph 23 to the Stipulation; and (3) PSEG Power, as well as any other gas distribution customer, may apply for a prospective bypass-related rate discount pursuant to the standards and procedures established through the generic proceeding.

ECG/MEG

On June 10, 2010, ECG filed its exceptions with the Board requesting that ALJ Braswell's Initial Decision be rejected by the Board in its entirety.

According to MEG, ALJ Braswell erred in accepting the non-unanimous Stipulation without affording ECG the opportunity to argue against it. Instead, the Initial Decision envisions that "ECG and other interested parties be given the opportunity, in a generic proceeding, to address the ...issues raised by ECG." (MEG Exceptions at 5). According to MEG, while this generic proceeding takes place, ECG will remain subject to unlawful rates, terms, and practices and will suffer daily harm. (Ibid.). MEG further contends that ALJ Braswell could not have considered the Stipulation (a 400-page plus document) within 24 hours, and could not do it without hearing argument in opposition. Consistent with the Board's decision in In re Petition of United Water Toms River, Inc., Docket No. WR08030139 (October 23, 2008) ("United Water Order"), MEG requests that the matter be remanded to ALJ Braswell. (Id. at 6-7).

In addition, the ECG Exceptions claim that ALJ Braswell erred in accepting the Stipulation without support in the record sufficient to find that the rates and terms were just and reasonable. MEG states that the Initial Decision is internally inconsistent in that it recognizes on the one hand that evidence of unjust discrimination and undue preference has been presented in this proceeding, and then on the other hand adopts the Stipulation on the basis that the rates and terms are "consistent with law." (Id. at 7).

Similar to the arguments advanced by NJLEUC, ECG asserts that the Initial Decision did not fully dispose of all issues in the case in violation of the Administrate Procedure Act. MEG maintains that ALJ Braswell erred by disregarding Paragraph 24 of the Stipulation, and instead recommended to the Board that the issues raised by ECG should be addressed in a future generic proceeding. (Id. at 11). In addition, ECG does not believe that a generic proceeding is necessary to fully develop the issues raised by ECG in this, contested proceeding, arguing that the issues raised were fully developed in this proceeding and the sufficiency of the record to support a determination by the Board on the just and reasonableness of the rates and terms and conditions incorporated into the Stipulation. (Id. at 12). Furthermore, ECG considers the issues presented in this matter as unique to ECG and PSEG Power making a generic proceeding inappropriate.

ECG maintains that by approving the Stipulation, ALJ Braswell not only erred in not adopting a remedy to address the unlawfully discriminatory TSG-NF rate, but instead sanctioned PSE&G's unlawfully discriminatory treatment of ECG in violation of law. (Id. at 13-16). Moreover, ECG states that the harm resulting to ECG cannot be corrected retrospectively by the Board as it cannot simply refund the difference in rates to ECG. (Id. at 15).

The MEG Exceptions further assert that ALJ Braswell erred in failing to remedy the unlawful rate applicable to PSE&G's affiliate, PSEG Power, arguing that Board approval of the PSEG Power rate does not justify applying the less favorable TSG-NF rate, terms and conditions to similarly situated customers or prevent the Board from subjecting PSEG Power to appropriate terms of service in this proceeding. (Id. at 18). Claiming discrimination in favor of its affiliate PSEG Power, ECG reiterates that PSE&G is in violation of N.J.A.C. 14:3-3 by providing a gas transportation rate that equates to a third of the rate paid by others similarly situated. (Id. at 21).

Lastly, ECG argues that ALJ Braswell erred in not adopting ECG's proposed tariff which would have eliminated the inequitable practices it alleges exist today. In addition, ECG believes that the ALJ erred in concluding that the institution of the proposed EGS-NR tariff would have statewide implications, stating that the tariff would only apply to PSE&G and its generation customers. (Id. at 23).

Neither Board Staff nor Rate Counsel filed exceptions.

Reply Exceptions

PSE&G

In its reply exceptions, PSE&G submits that there is ample record support for the justness and reasonableness of all of the rates in the Stipulation, contrary to the arguments in MEG's and NJLEUC's Exceptions. (PSE&G Reply Exceptions at 1). The Company states that NJLEUC's and MEG's remaining claims involve customer-specific issues and therefore the ALJ correctly recognized that the base rate case was not the proper forum in which to analyze individual customers' circumstances. (Ibid.) PSE&G argues that MEG's decision to present its customer-specific arguments in a base rate case cannot preclude the Company from the rate relief it has proven. (Id. at 9)

According to PSE&G, the Company provided extensive support for the reasonableness of all of its rate schedules, including the rate for TSG-NF. (Id. at 3). In addition, the tariffs attached to the Stipulation, including the TSG-NF tariff, primarily change the level of the rates, and do not alter the way the rates are designed or the tariff language approved by the Board in previous PSE&G rate cases. (Id. at 4). For these reasons, PSE&G argues that the Initial Decision should be approved to the extent that it determined the rate case issues based on the record evidence, including the tariff for TSG-NF customers. (Id. at 3).

Furthermore, the Company maintains that contract negotiated rates are set based on Board review and approval of the relevant factual circumstances of the individual customer and that MEG recognizes that these contractual arrangements usually span multiple years and are not altered or subject to revision in a base rate case. (Id. at 6).

PSE&G maintains that ALJ Braswell did not err in accepting the non-unanimous Stipulation without first giving MEG the opportunity to argue against it. The Company argues that MEG's reliance on the United Water Order is misleading and ignores the fact that there had been no hearings in that matter. PSE&G asserts that in this case, by way of contrast, the Stipulation was executed and presented to ALJ Braswell after eight days of evidentiary hearings and the submission of 337 exhibits into the record. (Id. at 11). Further, the Company argues that

MEG's claim that ALJ Braswell "did not, and could not" have evaluated the Stipulation on the merits without hearing argument in opposition, completely ignores the evidentiary hearings that took place and the post-hearing briefs submitted to ALJ Braswell well in advance of the Stipulation. (Ibid.) Instead, PE&G submits that all of the arguments raised in MEG's Initial and Reply briefs are applicable to the Stipulation, which actually provided for a lower level of rate increase than originally requested by PSE&G. (Id. at 12).

The Company also claims that there is adequate evidence in this record for the Board to find that the rate fixed for gas transportation service to PSEG Power's generating facilities is not unlawfully discriminatory or unjust and unreasonable. (Id. at 13). The fact that the rate for PSEG Power's generating facilities is different than MEG's rates does not render it unlawfully discriminatory, according to PSE&G (Ibid.) PSE&G contends that the MEG's argument that PSE&G should not be able to charge a rate for transportation service to PSEG Power's generating facilities that is lower than what it charges MEG has no legal basis. (Id. at 14). The Company further notes that even MEG's proposed tariff would not require PSE&G to charge all generators the same rate, and would instead provide considerable discretion between the ceiling and the floor. (Id. at 16).

With respect to NJLEUC's argument that "there exists a substantial question as to whether the Board may authorize nonpayment of the SBC by PSEG Power," PSE&G continues to maintain that the statute provides no formula or direction to aid the Board in determining how much a particular customer must pay through the SBC. (Id. at16). However, PSE&G states that should the Board decide not to reject MEG's and NJLEUC's claim, the "appropriate" manner of imposing the SBC and/or determining the proper level of the charge in various circumstances, including circumstances where an arrangement with a customer pre-dates the existence of EDECA and the SBC, could be addressed in a generic proceeding, as suggested by ALJ Braswell. (Id. at 17-19).

Furthermore, PSE&G claims that NJLEUC's request that the Board (1) retroactively adjust the GRC and PSE&G's TSG-NF rates and surcharges applicable from August 1, 2002, and (2) require the Company to refund to its other gas distribution customers amounts that allegedly would have been paid by PSEG Power, ignores the facts of the record and is inconsistent with well-settled law prohibiting retroactive ratemaking and the post hoc modification of filed rates. (Id. at 17). The Company asserts that NJLEUC arguments are a mischaracterization of the Board's 2002 Gas Contracts Order, and the Board has no authority to adjust rates retroactively. (Id. at 18).

PSE&G submits that should the Board decide not to reject MEG's and NJLEUC's claims, the Board could consider employing proceedings like the ones recommended by ALJ Braswell, where there can be explicit, customer-specific findings of fact and generic issues can be addressed. (Id. at 26). While supporting the commencement of a proceeding(s) to permit relevant facts to be presented regarding the circumstances that justify the rate in the case of PSEG Power, the Company notes that the rate established by the Board for PSE&G to provide gas transportation service to PSEG Power must remain in effect until changed through a specific proceeding addressing whether another rate should be prospectively applied and if so, what that rate should be. (Id. at 27-28). PSE&G further supports the establishment of a generic proceeding to address certain issues, including appropriateness of MEG's proposed tariff. (Id. at 29).

Finally, with respect to MEG allegations that the rate charged by PSE&G for gas transportation to PSEG Power's generating facilities is an undue affiliate preference, the Company believes these arguments are baseless. (Id. at 31). PSE&G argues that the regulation to which MEG and its witness refer does not apply to the relationship between PSE&G and PSEG Power because the regulation is limited in scope to the relationship between utilities and their affiliates that are engaged in the provision of competitive services to retail customers in the State of New Jersey. (Id. at 32).

NJLEUC

On June 17, 2010, NJLEUC submitted reply exceptions asking the Board to reject PSE&G's exceptions as an attempt at an after-the-fact justification for preferential treatment that is not consistent with the record in this matter, which clearly demonstrates that since 2002, PSEG Power has improperly received a deeply discounted rate for its interruptible gas transportation service, and has never paid the non-bypassable SBC, RGGI, or CAC surcharges applicable to other PSE&G natural gas distribution customers. (NJLEUC Reply Exceptions at 2). NJLEUC states that while PSEG Power's future transportation rate should receive close Board scrutiny, PSEG Power's ongoing preferential treatment should be halted immediately, with PSEG Power (1) placed on Rate Schedule TSG-NF and (2) required to pay the SBC, RGGI, and CAC surcharges like any other gas distribution customer. (Id. at 11).

NJLEUC further claims that PSE&G's reliance on the doctrine of retroactive ratemaking is misplaced. (Id. at 12). According to NJLEUC, the prohibition on retroactive ratemaking assumes that the rate previously charged received regulatory approval. NJLEUC alleges that because there is no Board Order approving preferential treatment afforded to PSEG Power, this does not apply and revision of the rate is appropriate ratepayer relief. (Ibid.)

NLEUC also discredits PSE&G's interpretation of EDECA and any language that addresses the Board's discretion with respect to the applicability of the SBC to *all* customers on a *non-bypassable* basis, contending that adoption of PSE&G's interpretation would allow the exceptions to swallow the rule. (Id. at 13).

ECG/MEG

In its reply exceptions, ECG states that its only request in this case is the equitable treatment of rates and terms of service to all merchant generators, claiming any treatment to the contrary is unlawful. (MEG Reply Exceptions at 1). MEG further states that the Stipulated increase to the TSG-NF class only compounds the inequality and daily financial hard visited upon ECG and by virtue of approving the Stipulation, ALJ Braswell will only widen the discriminatory gap in favor of PSEG Power. (Id. at 4).

In response to PSE&G's assertions, MEG submits that ALJ Braswell's Initial Decision contains no findings of fact on the central issues raised by ECG. as required by the State's Administrative Procedure Act. (Id at 3). Therefore, ECG believes that the Initial Decision is inconsistent with the fundamental principles of administrative law and thus is a nullity. (Ibid.). The MEG Reply Exceptions submit that if the Board were to accept the Initial Decision, it would likewise fail to engage in reasoned decision making, stating that neither the Board nor any reviewing court can ascertain the basis for acceptance of the Stipulation as to the contested issues raised on the record. (Id. at 7).

While arguing the record is void of any evidence related to the stipulated TSG-NF rates, MEG claims that the record is more than fully developed concerning the unjust, unreasonable, and unlawfully discriminatory existing and proposed TSG-NF rate. (Id. at 9). MEG further states that PSE&G's representation in its Exceptions to the Initial Decision that ALJ Braswell's acknowledgement of Mr. Schirra's testimony that the PSEG Power rate was approved by the

Board is in no way "dispositive" since the Board never authorized PSE&G to charge discriminatory rates to competitors of PSEG Power. (Id. at 13). MEG's Replies to Exceptions also argue that the record supports the fact that the TSG-NF rates are not justified on cost of service principles and are inconsistent with the value of the service provided to customers, especially in comparison to other similarly situated gas transportation customer (namely PSEG Power). (Ibid.) In support of its argument, MEG points out the fact that the rates applicable to Rate Schedule Gas Transportation Service-Firm (TSG-F)[10] are set very similar to those applicable to TSG-NF customers, even though the non-interruptible nature of the TSG-F service makes it more valuable. (Id. at 14).

MEG believes that, as a result of the substantial evidence on the record in this proceeding, there is no need for further proceedings on these issues, and instead submits that the proper time to decide the issues presented by ECG is this proceeding is now. (Id. at 16). ECG claims that should the Board fail to act, its facilities will be forced into a continued, frequent idle state with minimal to no profitability while PSEG Power continues to operate, expand its facilities and profits in the PJM market to the detriment of ECG as well as PSE&G's gas customers. (Id. at 17). MEG further cites the fact that all interested parties who chose to could have presented testimony concerning the issues raised by ECG in this proceeding and further proceedings would be duplicative and perpetuate harm to ECG. (Id. at 18).

Rate Counsel

On June 17, 2010, Rate Counsel filed its replies to exceptions in this matter in response to (1) MEG's argument that the Board should adopt its proposed special tariff for electric generators; (2) PSE&G's argument that a contested proceeding is not necessary to grant a discount or preferences; and (3) NJLEUC's argument that the Board should declare PSE&G's arrangement with PSEG Power invalid after July 31, 2002 and order retroactive refunds and other related remedies. (Rate Counsel Replies to Exceptions at 5).

Rate Counsel submits that MEG's proposed special tariff provisions for electric generators goes well beyond what is needed to resolve MEG's dispute with PSE&G, and beyond the scope of the issues that are appropriate to consider in a base rate proceeding. (Ibid.) Rate Counsel asserts that if MEG believes that PSE&G has not offered to provide service at a rate that is justified by a credible bypass threat, it can initiate a contested proceeding in which MEG can provide, and other parties can review the evidence in support of the rate MEG believes is reasonable. (Id. at 6-7). Rate Counsel further argues that the record of this proceeding is not sufficient to support a finding that PSE&G has engaged in unreasonable discrimination, stating that that New Jersey law does not prohibit all discrimination and preferences, only unreasonable discrimination and undue preference. (Id. at 7). Rate Counsel states that MEG's proposed remedy would allow the granting of discounts and preferences for reasons well beyond those permitted under the Board's current practice, and such a fundamental change in Board policy should not be undertaken as part of a base rate proceeding involving a single utility. (Ibid.) Therefore, Rate Counsel supports ALJ Braswell's finding that the tariff proposed by EGC would have broad, statewide implications that would need to be explored in a proceeding with notice to all interested stakeholders, not just the parties to this proceeding. (Id. at 8).

Rate Counsel also objected to PSE&G's assertion that the Board can make findings that rate discounts and preferences should be granted without conducting a contested case. Rate Counsel argues that while N.J.A.C. 14:3-1.3(f), which PSE&G relies on in support of its argument, requires the filing of supporting material that could be used as a part of the basis for

[10] Rate Schedule TSG-F is a firm transportation service, not subject to interruption.

the required findings by the Board, the regulation does not deny the right to a hearing to any parties whose rights may be affected by the proposed special rate. (Rate Counsel Replies to Exceptions at 8).

Lastly, Rate Counsel maintains that, consistent with ALJ Braswell's findings, the issues raised by NJLEUC should be considered in a separate proceeding to be convened by the Board. (Id. at 9). According to Rate Counsel, the issues to be considered in the separate proceeding should be: (1) whether the rates charged to PSEG Power are consistent with the law; (2) if not, what the appropriate standards and procedures should be going forward; and (3) what remedies, if any, are appropriate to address the rates charged since August 1, 2002. (Ibid.) Rate Counsel also states that to the extent the record in this case provides evidence germane to these issues, the parties should be permitted to rely on the evidence already adduced but all interested parties—including those not parties to the rate case—should be afforded an opportunity to participate. (Ibid.)

Board Staff did not file replies to exceptions.

DISCUSSION AND FINDINGS

The Board has carefully reviewed the record in this matter, including the petition, the Stipulation, ALJ Braswell's Initial Decision, and the exceptions and replies to exceptions filed by the Parties. For the reasons discussed below, the Board adopts, in part, ALJ Braswell's Initial Decision and the Stipulation in this matter.

The Board is mindful of ECG's position that the ALJ committed error in ruling on the Stipulation without allowing ECG to file its objections, relying on our decision in the United Water Order and requesting remand before the Board rules on the Stipulation. ALJ Braswell maintained that he did not deny ECG's attorney an opportunity to present a statement of its objections to the proposed settlement, only an opportunity to submit argument on the lack of fairness of the stipulated rate to his client. Initial Decision at 6. ECG did not misread the United Water Order. The Board continues to support the opportunity for a party opposing a settlement to submit its specific objections to the terms of that agreement prior to any ruling on it by the ALJ. The terms of a settlement may be significantly different from the litigated positions of the parties. Therefore, prior participation in the proceedings does not obviate the right to articulate any objections to the compromise, and to have those objections considered as part of the evaluation of the settlement. However, in this case the Board declines to exercise its discretion to remand under N.J.A.C. 1:1-18.7, and will retain the open issues at the Board as described later in this Order.

In evaluating a proposed settlement, the Board must review the record, balance the interests of the ratepayers and the shareholders, and determine whether the settlement represents a reasonable disposition of the issues that will enable the Company to provide its customers in this State with safe, adequate and proper service at just and reasonable rates. In re Petition of Pub. Serv. Elec. & Gas, 304 N.J. Super. 247 (App. Div.), cert. denied, 152 N.J. 12 (1997). The Board is cognizant of the fact that the proposed stipulation is non-unanimous. Nonetheless, it is well-established that the Board may consider and rely upon non-unanimous stipulations as fact-finding tools so long as the Board independently examines the existing record and expressly finds that the stipulated rates yield rates that satisfy the statutory standards. (Id. at 270.)

We continue to believe that, in complex and technical cases such as this one, the adversary parties themselves are often in the best position to work out the framework of a reasonable resolution of the issues. The Board recognizes that the Signatory Parties worked diligently to negotiate a compromise that attempts to meet the needs of as many stakeholders as possible.

The Board further recognizes that the Stipulation represents a balanced solution considering the many complex issues that were addressed during the proceeding. Therefore, based on the Board's review and consideration of the record in this proceeding including the Stipulation and Initial Decision as well as the petition and testimony, exceptions and replies, the Board **HEREBY FINDS** that with the modifications described below the Initial Decision and the Stipulation are reasonable, in the public interest, and in accordance with the law with respect to the gas ratepayers and PSE&G's gas division issues. Therefore, subject to the modifications described below, the Board **HEREBY ADOPTS** ALJ Braswell's Initial Decision with respect to the Stipulation as its own, as if fully set forth herein as they pertain to the gas ratepayers and PSE&G's gas division.

In coming to its determination to approve the Stipulation, the Board is guided by certain time honored principles. Among those is that a public utility is entitled to such rates as will permit it to earn a return on the value of the property employed for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other businesses with corresponding risks and uncertainties. Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679, 692 (1923). The Board must determine what, in a particular situation, is a just and reasonable return for a public utility. Atlantic City Sewerage Co. v. Board of Public Utility Com'rs, 128 N.J.L. 359 (1942), aff'd 129 N.J.L. 401 (E&A 1943). Public utility rates are valid so long as they enable the utility to operate successfully, maintain its financial integrity, attract capital and compensate its investors for the risk assumed. FPC v. Hope Natural Gas Co., 320 U.S. 591, 605 (1944). The cost of equity figure is appropriate so long as it is "within the range of reasonableness, the zone between the lowest rate not confiscatory and the highest rate fair to the public." In re N.J. Power & Light Co., 9 N.J. 498, 535 (1952).

Accordingly, the Board **FINDS** that the revenue requirement increases to the gas distribution rates are fair and reasonable and reflect the increase in capital investments for infrastructure and increases in other costs and expenses that PSE&G is incurring to provide safe, adequate and reliable service. The Board notes that the stipulated increase in gas distribution rates of $26.456 million is substantially less than the $105.95 million sought by the Company in its 6 & 6 update to the petition. This Board, however, remains cognizant of the impact of any increase on New Jersey ratepayers during this time of continued economic stress and volatile energy prices. To that end, the Board **FURTHER FINDS** that, similar to the electric division, a system average increase applied to all gas rate classes as agreed to in the Stipulation should minimize the cost burden on any one class of customers; it would effect, in essence, an equal sharing of the necessary increase in the Company's revenues. Thus, the Board **CONCURS** with the across the board interclass allocation method applied to set rates under the Stipulation.

The Board also **FINDS** that the appropriate return on common equity for PSE&G is 10.3 percent with a 51.2 percent common equity component in the capital structure. The 10.3 percent return on common equity is consistent with other recent Board decisions, and fairly balances the interests of ratepayers and shareholders. In addition, the Board notes that this return and capital structure supports solid investment grade credit ratings to assure that the Company will be able to provide safe, adequate and proper service in a financially efficient manner.

The Board has carefully considered ECG's comments with respect to the reasonableness of the stipulated TSG-NF rate. The Board notes that the structure of the rate schedules has not changed and remains similar to those approved in the Company's previous gas base rate cases.[11]

[11] IMO the Petition of Public Service Electric and Gas Company for Authority to Revise its Gas Property Depreciation Rates AND IMO the Petition of Public Service Electric and Gas Company for Approval of an

ECG did not appeal those decisions. Additionally, the Company has agreed to provide a revised cost of service study with its next rate case. However, the Board is cognizant that, as described below, any Board decision on the issues raised by the Parties regarding PSEG Power may have an impact on the TSG-NF rates. Accordingly, the Board **HEREBY APPROVES** the TSG-NF on a provisional basis, subject to refund pending the Board's decision on the PSEG Power issues.

Turning to the MEG/NJLEUC issues, the Board has carefully reviewed ALJ Braswell's findings, as well as the exceptions and reply exceptions filed by the Parties. With respect to ALJ Braswell's finding that a generic proceeding should be established to address rate discounts and special contracts, the Board agrees that a proceeding open to all interested stakeholders is appropriate for exploration of issues of statewide impact relating to the provision of discounted gas utility distribution rates and contracts based upon a customer's ability to by-pass the utility's gas distribution system and the applicability of the Societal Benefit Charge to such instances of bypass potential that may inform rulemaking. The Board believes that this proceeding should include, among other issues, a review of "evergreen" provisions, as well as discounted gas utility distribution rates and contracts, and the applicability of SBC, RGGI, and CAC charges prospectively to customers with an ability to by-pass the utility's gas distribution system. Accordingly, the Board **HEREBY OPENS** a stakeholder proceeding and **DIRECTS** Board Staff to open a new docket and notify all affected parties and to post notice of this proceeding on the Board's website. In addition, pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** Commissioner Fiordaliso as the presiding officer who is authorized to rule on all motions that arise during the pendency of this generic proceeding, as well as establish and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

However, with regard to ALJ Braswell's finding that a generic proceeding be established to determine the issues raised in Paragraph 24 of the Stipulation, the Board **HEREBY REJECTS** that recommendation as inappropriate to the determination of the rights of specific parties, and **HEREBY REOPENS** the contested case in this docket to address those issues. The Board is not persuaded by ECG and NJLEUC that the record on these issues has been fully developed in the proceedings at the OAL and provides a sufficient basis for the Board to rule on the disputed issues now.

The Board **CONCURS** with Rate Counsel that the issues raised by NJLEUC and MEG regarding PSEG Power require further information in order to be adequately addressed by this Board. Accordingly, the Board **HEREBY ORDERS** that the record in this matter be supplemented to address the following issues:

a. Whether the continued receipt of interruptible gas transportation service pursuant to a non-tariff rate schedule by PSEG Power beyond July 31, 2002 was justified and in the public interest;
b. Whether the SBC and RGGI charges should apply to PSEG Power, retroactively and prospectively;
c. Whether the rate applicable to PSEG Power is discriminatory to MEG and other electric generation customers; and
d. Whether the TSG-NF rate service should be applicable to PSEG Power, MEG and other electric generation customers.

Increase in Gas Rates and for Changes in the Tariff for Gas Service B.P.U.N.J. No 12, Gas Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, BPU Docket Nos. GR01050297 and GR01050328, Order dated January 9, 2002.
IMO the Petition of Public Service Electric and Gas Company for Approval of an Increase in Gas Rates, Depreciation Rates for Gas Property and for Changes in the Tariff for Gas Service, BPU Docket No. GR05100845, Order dated November 9, 2006.

Pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** Commissioner Asselta as the presiding officer who is authorized to rule on all motions that arise during the pendency of the proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

As noted in its June 7, 2010 Order, the Board **HEREBY FINDS** PSE&G's withdrawal of its request for a Pension Expense Tracker and an expanded Infrastructure Program to be in the public interest and thus, reasonable and prudent.

The Board **HEREBY DIRECTS** Staff to close PSE&G's petition with respect to check metering in Docket No. GT07010036.

The Board **HEREBY DIRECTS** that the gas rates resulting from the Stipulation become effective for service rendered on and after the date of this Order, with the TSG-NF rates implemented on a provisional basis, subject to refund pending further Order by the Board. With respect to the changed language in the gas tariff sheets attached to the Stipulation, the Board **HEREBY FINDS** such language changes to be consistent with the Board's regulations, and therefore, in the public interest. The Board **HEREBY DIRECTS** the Company to file compliance gas tariff sheets consistent with the terms of this Order within the next five (5) business days.

The Company's costs will remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

DATED: 7/9/10

BOARD OF PUBLIC UTILITIES
BY:

LEE A. SOLOMON
PRESIDENT

Jeanne M. Fox
JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

Nicholas Asselta
NICHOLAS ASSELTA
COMMISSIONER

Elizabeth Randall
ELIZABETH RANDALL
COMMISSIONER

ATTEST: Kristi Izzo
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

Kristi Izzo