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May 9, 2013

Via Hand Delivery and Electronic Mail
Hon. Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
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Re: In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and N.J.S.A. 48:3-98.1
("Solar4All Extension Petition")
BPU Docket No. EO12080721

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of a Solar Loan III Program and an Associated Cost Recovery Mechanism and for Changes in the Tariff for Electric Service, B.P.U.N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1
("Solar Loan III Petition")
BPU Docket No.: EO12080726

Dear Secretary Izzo:

Pursuant to the schedule set forth on April 25, 2013, enclosed please find an original and ten copies of the Objections submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") to the stipulation of settlement circulated by Public Service Electric and Gas Company on April 26, 2013 ("April 26 Stipulation") in the above-captioned matters. Copies of Rate Counsel's Objections are being provided to all parties by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the Objections. Please stamp and date the extra copy as "filed" and return it to our courier.

Thank you for your consideration and assistance.

Respectfully submitted,

s/ Stefanie A. Brand
Stefanie A. Brand
Director, Division of Rate Counsel

SAB/bw
encl.

cc: Hon. Robert M. Hanna, President (via hand delivery)
Hon. Joseph L. Fiordaliso, Commissioner (via hand delivery)
Service lists (via electronic mail)

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of Extension of a Solar Generation Investment Program and Associated Cost Recovery Mechanism and for Changes ("PSE&G S4A Extn")
BPU Dkt. No.: EO12080721

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In the Matter of the Petition of Public Service Electric and Gas Company for Approval of A Solar Loan III Program and an Associated Cost Recovery Mechanism and for Changes In the Tariff for Electric Service B.P.U.N.J. No.15 Electric Pursuant BPU Docket No.: EO12080726

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BEFORE THE STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITIES

I/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF A SOLAR LOAN III PROGRAM AND ASSOCIATED COST RECOVERY MECHANISM AND FOR CHANGES IN THE TARIFF FOR ELECTRIC SERVICE, B.P.U.N.J. No. 15 ELECTRIC PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A. 48:2-21.1	)	**BPU DOCKET NO. EO12080726**
I/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN EXTENSION OF A SOLAR GENERATION INVESTMENT PROGRAM AND ASSOCIATED COST RECOVERY MECHANISM AND FOR CHANGES IN THE TARIFF FOR ELECTRIC SERVICE, B.P.U. N.J. NO. 15 ELECTRIC PURSUANT TO N.J.S.A. 48:2-21, 48:21-21.1 AND N.J.S.A. 48:3-98.1	)	**BPU DOCKET NO. EO12080721**

OBJECTIONS TO THE PROPOSED STIPULATION OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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FILED: May 9, 2013

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PRELIMINARY STATEMENT

Currently before the New Jersey Board of Public Utilities ("BPU, "Board") is a purported settlement of two matters with significant regulatory and energy policy implications, arrived at without the participation of the statutory representative of ratepayers and other parties to whom this Board has granted intervention due to their interest in this matter. These settlements were entered into after these matters were fully litigated and briefed. They resulted from private meetings that apparently occurred between unnamed representatives of Board Staff and Public Service Electric and Gas Company ("PSE&G", "Company"). New Jersey Division of Rate Counsel ("Rate Counsel") and interveners were not included in these discussions and were only given the opportunity to comment and object to this secret settlement after the basic principles were already agreed to by the Company and Staff. The result is a resolution that has no support in the record, would have the Board cede its authority and duty to oversee the operation and costs of programs run by a regulated public utility, and would violate other important laws and policies of this State.

The Supreme Court of this state has ruled repeatedly, that government must act fairly and openly when dealing with the public. In University Cottage Club of Princeton New Jersey Corp. v. New Jersey Dept. of Environmental Protection, 191 N.J. 38, 57 (N.J. 2007), the Court stated:

> The due-process standards incorporated in the New Jersey Administrative Procedure Act provide a minimum standard for agency conduct, but do not preclude an agency from acting fairly and candidly in respect of those whose interests may be affected by agency action. In other contexts we have noted that "government has an overriding obligation to deal forthrightly and fairly with property owners," *F.M.C. Stores Co. v. Borough of Morris Plains*, 100 N.J. 418, 426, 495 A.2d 1313 (1985), and have insisted that "government must 'turn square corners' rather than exploit litigational or bargaining advantages. . . "*W.V. Pangborne & Co. v. New Jersey Dep't of Transp.*, 116 N.J. 543, 561, 562 A.2d 222

(1989) (quoting *F.M.C. Stores Co.*, *supra*, 100 N.J. at 426, 495 A.2d 1313).

Here, the corners turned by Staff and the company were anything but "square." Once the company and the unnamed government representatives reached a tentative agreement, the Company reached out to certain interveners of their choosing to explain the proposed arrangement and seek their support. Parties they thought would not be supportive were kept in the dark. Only after Rate Counsel brought this procedure to the attention of the Advising Deputy Attorney General and all parties to this matter, was the proposed agreement disclosed to other parties. At that point a "settlement meeting" was held, but only minor revisions were entertained, as the Company already had the support of Board Staff and viewed that as ensuring approval by this Board.

Not only is the procedure followed here unprecedented and unacceptable, the settlement itself is unsupported by the record and contrary to law and policy. It includes no limit on how much the Company can spend, little oversight on how it may spend and whom it may choose to receive these ratepayer-funded contracts. It includes provisions that are directly contrary to policies recently announced by the Board, and policies that have long been held. Approval of this Stipulation would have the Board cede its jurisdiction to oversee the reasonableness of this program and the profits of the utility.

As this Stipulation violates both sound policy and basic principles of due process, Rate Counsel respectfully requests that this Board reject the settlement and decide the case on the fully litigated record before it. In the alternative, Rate Counsel asks that the Board condition approval on modifications proposed below that will conform the Stipulation to existing law and policy.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

1. S4AE Procedural History[1]

On August 1, 2012, PSE&G filed a Petition ("Petition") with the Board requesting approval of its proposedSolar 4 All Extension ("S4AE") program and an associated rate recovery mechanism pursuant to N.J.S.A. 48:3-98.1 et seq. PSE&G presented its S4AE proposal as an extension of its existing Solar 4 All ("S4A") program, in which the Company collaborates with developers, installers and manufacturers to develop grid-connected solar photovoltaic projects that are owned and operated by the Company.[2] The S4AE Petition sought authorization for the Company to invest $729.4 million over five years to develop 136 megawatts of solar capacity. *P-1*, p.2. The solar projects would be divided into four separate segments: (1) $474 million would be invested in 90 MW of capacity to be located on closed sanitary landfills, abandoned commercial and industrial sites known as "brownfields," and other "underutilized" properties; (2) $74 million would be invested in 20 MW to be located on warehouse roofs; (3) $133 million would be invested in 25 megawatts to be located in parking lots; and (4) $9 million would be invested in a pilot program to develop a total of 1 MW in projects that combine solar power with energy storage. Under PSE&G's filed proposal, the Company would own and operate the solar systems on leased space. *P-1*, pp. 12-15. In addition to the proposed capital investments, the Company estimated that it would expend a total of approximately $39.5 million over the first five years of the program to operate and maintain the solar facilities. *P-1*, p.3.

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[1] A more detailed procedural history and statement of facts is found in Rate Counsel's S4AE Position Paper, dated April 15, 2013, pp. 5-9..

[2] PSE&G's S4A solar investment program was approved by the Board, as memorialized in an Order dated August 3, 2009. I/M/O PSE&G, BPU Dkt. No. EO09020125 (Order, Aug. 8, 2009). The approved S4A program consisted of two segments: (1) a centralized solar segment (40MW) comprised of larger solar installations, and (2) a "Neighborhood Solar" segment (40MW) consisting of solar panels installed on approximately 200,000 utility poles.

As filed, PSE&G proposed a return on its net investments in the S4AE program based on the weighted average cost of capital ("WACC") used to set rates in the Company's last base rate case, including a 10.3 % return on equity. *P-25*, p. 3. SRECs generated by the S4AE projects would be sold in the SREC auction approved by the Board for the Company's current S4A program, with revenues therefrom offsetting program costs. *P-1*, p. 11 and *P-25*, p.5. If SREC prices were to drop below PSE&G's projected levels, the cost to ratepayers would be even greater than that projected by the Company. *RC-12*, p.22. In its Petition, PSE&G proposed to recover its costs through a separate component of its existing electric RGGI Recovery Charge ("RRC"), to be called the "Solar Generation Investment Extension Program Component" ("SGIEPC"). *P-1*, p.3, and pp.16-17; *P-25*, pp.7-8. The SGIPC would be reviewed, trued up and modified in annual filings. *P-25*, pp.8-9.

On October 23, 2012, the Board issued an Order which retained the instant matter for review and hearing by the Board, and designated President Robert M. Hanna as the presiding hearing officer. Public hearings were held on November 17 and 29, and December 4, 2012, in New Brunswick, Hackensack, and Mount Holly, respectively. *P-2*. The procedural schedules issued by President Hanna set forth dates for the filing of direct, rebuttal and surrebuttal testimonies by the parties.[3]

On January 18, 2013, Rate Counsel submitted the direct testimony of Ms. Andrea C. Crane and David E. Dismukes, PhD. Rate Counsel Exhibits *RC-12* and *RC-3* and *RC-3A* (confidential). The following intervenors also filed testimony on that date: KDC Solar, Inc. "(KDC"), The Solar Energy Industries Association ("SEIA"), the Mid-Atlantic Solar Energy Industries Association ("MSEIA"), Wattlots, LLC, ("Wattlots") Petra Solar, Inc. ("Petra"), and Sundurance Energy. On

[3] See Procedural Orders dated November 19, 2012, January 15, 2013, and February 21, 2013. In addition, the 180-day review period was extended several times.

February 4, 2013, Rate Counsel filed rebuttal testimony. On March 1, 2013, Rate Counsel filed the surrebuttal testimony. Evidentiary hearings were held before Commissioner Joseph L. Fiordaliso on March 18, 19, and 21, 2013 in Newark. At hearing, PSE&G presented oral rejoinder testimony. Position Papers were filed by PSE&G, Rate Counsel, and intervenors on April 15, 2013.

2. SLIII Procedural History

On August 1, 2012, PSE&G filed a Petition (the "Petition") with the Board pursuant to N.J.S.A. 48:3-98.1, et seq. requesting approval of its proposed Solar Loan III ("SLIII") Program. PSE&G presented its proposed SLIII program as a follow-up to its earlier Solar Loan I ("SLI") and Solar Loan II ("SLII") programs.[4] In its Petition, the Company sought authorization to provide loans of up $193 million over a three-year period to support the development of 97.5 MW of solar capacity on its customers' premises. *P-1*, par. 3. Of the 97.5 MW, the Company proposed to allocate 9.75 MW to a Residential segment; 14.625 MW to a "Small Non-Res" segment for projects up to 150 kW on non-residential premises; 68.125 MW to a "Large Non-Res" segment for non-residential projects larger that 150 kW and up to 2 MW; and 5 MW to a "Landfills/brownfields" segment. *P-3*, p. 12-13 & Schedule JAF-SLIII-2, p. 1, 2. The Company also sought a return on its SLIII program net investments at the same WACC that was used to set rates in the Company's last base rate case, BPU Docket No. GR09050422, including a 10.3 percent return on equity. *P-1*, par. 9; *P-4*, p. 3. As proposed, the SLIII program included a number of changes from the SLII program including a "market-based" methodology for

[4] See I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Solar Energy Program and an Associated Cost Recovery Mechanism, BPU Dkt. No. EO07040278, Decision and Order (April 16, 2008) ("SLI Order"); I/M/O Petition of Public Service Electric and Gas Company for Approval of a Solar Loan II Program and an Associated Cost Recovery Mechanism, BPU Docket No. EO09030429 (Nov. 10, 2009) ("SLII Order"); and I/M/O Petition of Public Service Electric and Gas Company for Approval of a Solar Loan II Program and an Associate Cost Recovery Mechanism, BPU Dkt. No. EO09030249, Decision and Order Approving Program Changes (June 22, 2010) ("SLII Modification Order").

determining the Floor Price, increased loan application and borrower's administrative fees, and a new SREC processing fee intended to offset administrative costs. *P-1*, par. 7.

By Order dated September 13, 2012, the Board decided to retain the matter and designated Commissioner Joseph L. Fiordaliso, as the presiding officer. Public hearings were held on November 27 and 29, and December 4, 2012, in New Brunswick, Hackensack, and in Mount Holly, New Jersey, respectively. The procedural schedules issued by Commissioner Fiordaliso set forth dates for the filing of direct, rebuttal and surrebuttal testimonies by the parties.[5]

In accordance with Commissioner Fiordaliso's January 4, 2013 procedural Order, on January 11, 2012, Rate Counsel filed direct testimony. On February 6, 2013, PSE&G filed the rebuttal testimony. On that date SEIA also filed the rebuttal testimony of Ms. Katie Bolcar Rever.[6] On March 1, 2013, Rate Counsel filed the surrebuttal testimony. On April 1, 2013 PSE&G, Board Staff, Rate Counsel, SEIA and MSEIA entered into a Stipulation agreeing to the cancellation of the evidentiary hearings that were scheduled in this matter for April 1 and 2, 2013 and settling the contents of the record. Commissioner Fiordaliso adopted that stipulation by Order dated April 1, 2013. Position Papers were filed by PSE&G, Rate Counsel, SEIA, and KDC on April 15, 2013.

[5] See Procedural Orders dated October 4, 2012, January 4, 2013, and February 21, 2013. In addition, the 180-day review period specified by the RGGI Law was extended from the original deadline of January 28, 2013. By Order dated March 20, 2013, the Board, in accordance with a March 6, 2012 Stipulation among Rate Counsel, Staff and the Company, extended the 180-day RGGI review period to May 1, 2013.

[6] The following parties filed motions seeking intervenor status: New Jersey Solar Energy Coalition ("NJSEC"), KDC, SEIA, and MSEIA.

B. SETTLEMENT DISCUSSIONS AND THE APRIL 26 STIPULATION

1. Settlement Process and Briefing Schedule for the April 26 Stipulation

Throughout the course of both the S4AE and SLIII proceedings, both formal and informal settlement efforts have been on-going. Widely-noticed discovery and settlement meetings were conducted among all the parties to the S4AE and SLIII proceedings from November 2012 through January 2013.

On April 18, 2013, PSE&G circulated a draft stipulation of settlement encompassing both the S4AE and SLIII matters. The draft stipulation ostensibly represented the product of discussions among certain parties, and a surprising departure from the series of settlement meetings in the S4AE and SLIII matters which were marked by widespread notice and participation. A joint settlement conference for the S4AE and SLIII matters was held on April 24, 2013 at PSE&G's offices in Trenton, New Jersey. These discussions were not fruitful, in that a settlement involving all the parties was not reached.

On April 25, 2013, a status conference was held in which objecting parties were granted an opportunity to submit their objections to the Board. On April 26, 2012 PSE&G circulated a revised Stipulation (the "April 26 Stipulation") which was executed by PSE&G, Board Staff and some other parties and submitted to the Board later that day. This stipulation was apparently the result of a parallel settlement process which did not involve all of the parties. Not surprisingly, the terms of the settlement embodied in the April 26 Stipulation did not account for the interests of the parties that did not participate in the settlement talks.

On April 26, 2013, some parties to the S4AE and SLIII matters also filed a stipulation requesting an extension of the 180-day review period, to May 31, 2013 to allow objecting parties

to submit their briefs. The Board approved the requested extensions for both the S4AE and SLIII matters, as memorialized in two Orders dated April 30, 2013.

2. April 26 Stipulation – S4AE Items

The April 26 Stipulation caps the S4AE program size at 45 MW(dc). The stipulation does not cap the amount of money that may be spent for this program but simply lists an "estimated capital investment (excluding AFUDC) over the initial build-out period" of $247.2 million. April 26 Stipulation, par. 1. The April 26 Stipulation also specifies that "no capacity will be placed into service before Energy Year ("EY") 2015, and no more than 20 MWs of the 45MWs will be placed in service in EY 2015, with the remainder going into service in EY 2016 or thereafter." April 26 Stipulation, par. 3. The April 26 Stipulation sets forth the segments which comprise the 45 MWs of capacity: (a) Landfills/brownfields (42 MW); (b) "Underutilized government facilities" (1 MW); (c). "Pilot program on grid security/storm preparedness" (1 MW); and (d) "Pilot program for innovative parking lot applications" (1 MW). April 26 Stipulation, par. 4. Notably, although no S4AE projects are to enter service before EY2015, the Signatory Parties request that the Board permit the Company to commence recovery of its program costs beginning on June 1, 2013. April 26 Stipulation, par. 35.

The April 26 Stipulation also provides PSE&G with complete control over the management and administration of the S4AE program. PSE&G has exclusive authority to select the projects and sites that will be accepted into the program. Although the April 26 Stipulation states that sites and projects will be selected with consideration of the objectives if the program, those objectives are not defined anywhere in the April 26 Stipulation. April 26 Stipulation, par. 15.

Thus, the determination of the objectives, and whether particular projects are consistent with them, lies exclusively within PSE&G's discretion. PSE&G will also be solely responsible for determining the appropriate compensation to be paid to site owners. April 26 Stipulation, par. 11. In addition to rent payments to be calculated consistent with current program guidelines, the April 26 Stipulation provides that "[a]dditional payments may be made [by PSE&G] to site owners, which may also include pre- and post-commercial operation payments, and other option payments necessary to secure property rights for the site." April 26 Stipulation, par. 11. The April 26 Stipulation does not provide any further information regarding what will guide the determination of whether such payments will be made or what they will be, leaving these questions to the sole discretion of PSE&G.

The April 26 Stipulation also gives PSE&G much latitude in determining how to promote its solicitations for projects: "Notices for each solicitation [for Segments C and D] will be posted on the PSE&G website and may also be promoted through other means as determined by PSE&G." April 26 Stipulation, par. 13. There is no specific competitive or public process that is required.

There is also no specific process required for hiring program contractors other than a requirement that it be "competitive." The April 26 Stipulation also provides that PSE&G may procure the [S4AE] equipment directly and that "PSE&G will perform the interconnection work for projects in PSE&G's territory and may perform portions of the other work." April 26 Stipulation, par. 18, 19. There are no guidelines specified for when PSE&G may hire itself to do work or how it will ensure appropriate procedures for billing for and accounting for this work if performed by employees or equipment paid for through base rates.

For the pilot programs, PSE&G's power to determine who and what to pay is completely unfettered. The stipulation provides: "[b]ecause of the uniqueness of the pilot/demo projects, the exact nature of any financial transactions between PSE&G and the site owner will be determined on a case by case basis." April 26 Stipulation, par. 23. Indeed, the nature of these transactions may not be known until well after they are finalized. Although the April 26 Stipulation provides for quarterly construction updates to the Board, it does not require PSE&G to report on costs of financial issues and does not require copies of the quarterly reports to Rate Counsel. April 26 Stipulation, par. 27. The April 26 Stipulation also allows PSE&G to change the S4AE Program Rules with only ten business days advance notice to Board Staff and Rate Counsel, and an expedited procedure for Board review of any objections. April 26 Stipulation, par. 40.

The April 26 Stipulation provides that PSE&G will recover the net revenue requirements for the S4AE Program via the new SGIEPC component of the Company's electric RRC. The SGIEPC will be applicable to all electric rate schedules on an equal cents per kilowatt-hour basis for recovery of the costs associated with the Solar 4 All Extension Program. The revenue requirements recovered through the SGIEPC will be calculated to include a return on investment and a return of investment over the lives of the capital assets. April 26 Stipulation, par. 30. The Cost of Capital used to set the initial SGIEPC rate will be based on a WACC of 7.6431% (11.1790% on a pre-tax basis), based on an equity percentage of 51.2%, a return on equity of 10.0% and the Company's embedded long-term cost of debt as of March 31, 2013 of 5.1702%.). April 26 Stipulation, par. 31, 32. The WACC authorized by the Board in a subsequent base rate case will be reflected in subsequent monthly revenue requirement calculations. April 26 Stipulation, par. 32.

Among the items factored into the revenue requirement calculation are Operations and Maintenance ("O&M") Costs, including PSE&G labor, administrative costs related to the management of the Program, and "Rent/lease or other payments or bill credits made to non-PSE&G host sites/facilities and the fair values of rents for use of electric transmission sites/facilities." April 26 Stipulation, par. 30, 31. However, the April 26 Stipulation does not provide any guidelines or further descriptions of how such costs will be derived and accounted for ratemaking purposes.

The April 26 Stipulation provides that the SGIEPC will be changed "nominally" on an annual basis, with a true-up for actual results and a forecast of revenue requirements for the twelve months succeeding the anticipated Board approval date. April 26 Stipulation, par. 29. The April 26 Stipulation provides that the annual true-up filing will be subject to review by the Parties and at that point the program costs will be reviewed for "reasonableness and prudence." April 26 Stipulation, par. 37. The stipulation states that parties will have an opportunity for discovery and to file comments prior to the issuance of a Board Order establishing the Company's revised SGIEPC, April 26 Stipulation, par. 37, but does not provide for evidentiary hearings, if needed. Nor is there any indication of how "reasonableness and prudence" will be determined given the lack of specific criteria establishing program guidelines or costs.

Finally, rather than requiring PSE&G to request Board approval to roll the net, unrecovered S4AE Program investment balance into base rates at the time of a future electric base rate case filing, the April 26 Stipulation only provides that PSE&G "has the right" to do so. April 26 Stipulation, par. 34.

3. April 26 Stipulation - SLIII Items

The April 26 Stipulation provides that the SLIII Program shall be 97.5 MW in total size. Loan applications will be grouped into the following market segments: (a) Residential-Individual

Customer – net-metered; (b) Residential-Aggregated by a 3rd Party–net-metered ("Res-Aggregated"); (c) Non-residential ≤ 150kW – net-metered ("Small Non-Res"); (d) Non-residential >150kW (up to 2 MW per project) – net-metered ("Large Non-Res"); and (e) Landfills/brownfields (up to 5 MW per project) – either net-metered or grid connected ("Landfills"). April 26 Stipulation, par. 41, 42.

For segments (a, b, c, and d), PSE&G plans to conduct solicitations ("Solicitation Process" for eligible SLIII projects every other month or six times a year. April 26 Stipulation, par. 44. PSE&G will manage the Landfills/brownfields (segment (e)) solicitation process directly or through a third-party vendor. April 26 Stipulation, par. 42 (e). The April 26 Stipulation also sets forth the capacity that will be made available at each solicitation, by segment. April 26 Stipulation, par. 50. The cost of the Solicitation Process will be included in the borrower fees and PSE&G's administrative costs as described below. April 26 Stipulation, par. 46. PSE&G will hire an independent Solicitation Manager ("SM"), selected through a competitive bid process who will independently review and rank the bids received and provide guidance to the Company regarding competitive SREC floor prices and the competitiveness of individual segments based on such factors as the number of bidders, a statistical analysis of bids to identify and reject outliers, kW bid size, and range of pricing. April 26 Stipulation, par. 49. The SM will also provide its guidance to the Board Staff and Rate Counsel for review and comment the final decision is made by PSE&G. There is nothing in the April 26 Stipulation which provides for Board approval of the selection of projects. April 26 Stipulation, par. 49.

Under the terms of the April 26 Stipulation, PSE&G will recover the net revenue requirements for the SLIII Program via a new SLIII Program component ("SLIIIc") of the Company's electric RRC. April 26 Stipulation, par. 73. The Parties request that the Board

set the effective date of the initial SLIIIc as of June 1, 2013 or the date of the Board's written Order approving this Settlement, whichever is later. April 26 Stipulation, par. 77. The SLIII Signatory Parties stipulate that the revenue requirements recovered through the SLIIIc will be calculated to include a return on investment and a return of investment over the lives of the capital assets. April 26 Stipulation, par. 74. The Cost of Capital will be based on a WACC of 7.6431% (11.1790% on a pre-tax basis), based on an equity percentage of 51.2%, a return on equity of 10.0% and the Company's embedded long-term cost of debt as of March 31, 2013 of 5.1702%.). April 26 Stipulation, par. 74, 75. The WACC authorized by the Board in a subsequent base rate case will be reflected in subsequent monthly revenue requirement calculations. April 26 Stipulation, par. 75.

The April 26 Stipulation also provides that SLIIIc. will be changed "nominally" on an annual basis, with a true-up for actual results and a forecast of revenue requirements for the twelve months succeeding the anticipated Board approval date. April 26 Stipulation, par. 73.

The "Net Operations and Maintenance Costs" is calculated as Gross Operation and Maintenance Costs less any revenues received from the borrowers, where the "Gross Operations and Maintenance Costs" include PSE&G labor and other related on-going costs required to manage and administer the Program including related information technology expenses, the cost of the SM, and SREC disposition expenses. April 26 Stipulation, par.74. The SLIII Signatory Parties stipulate that the Net Operation and Maintenance Costs must equal zero over the life of the SLIII Program. April 26 Stipulation, par. 74. The net proceeds from SREC sales reduce the revenue requirement. April 26 Stipulation, par. 74.

The SLIIIc will be subject to adjustment and true-up through the deferral process and any required adjustment will be included in the over/under recovered balance to be recovered from or

returned to ratepayers over the following year. April 26 Stipulation, par. 78. The true-up calculation of over-and under-recoveries shall be included in an annual true-up filing. April 26 Stipulation, par.78. The April 26 Stipulation provides that the annual filing will be "subject to review by the Parties with opportunity for discovery and filed comments prior to the issuance of a Board Order establishing the Company's revised SLIIIc" and will include a review of "reasonableness and prudency" of program costs. April 26 Stipulation, par. 79.

ARGUMENT

The April 26 Stipulation is a proposed resolution of two separate Petitions that are before the Board as separate matters. As set forth in the Statement of Facts and Procedural History above, PSE&G's S4AE and SLIII proposal were filed as two separate petitions that were assigned two separate dockets, proceeded under two separate schedules, were heard separately, and are now before the Board with two separate records. Even after the submission of the April 26 Stipulation, the Board has continued to process these two matters separately, considering requests for extension of the 180-day review period for each matter as separate agenda items. As a result, Rate Counsel maintains that any Order or Stipulation resolving these matters should be separate as well.

The April 26 Stipulation raises some issues that are common to the resolution of both matters, and other issues that apply to S4AE and SLIII separately. This brief will address first, in Point I below, the procedural issues surrounding the April 26 Stipulation. Brief Points II and III will address, respectively, issues that apply specifically to the S4AE and SLIII matters. Finally, Point IV will address the proposed rate of return for both matters.

POINT I

THE PROCEDURE EMPLOYED IN ARRIVING AT THE PROPOSED STIPULATION VIOLATES THE DUE PROCESS RIGHTS OF RATEPAYERS AND OTHER PARTIES AND CANNOT FORM THE BASIS OF THE BOARD'S DECISION IN THIS CASE

These matters were filed in 2012 and were fully litigated as contested cases. The parties in both cases exchanged in discovery, filed testimony, and conducted evidentiary hearings before Commissioner Fiordaliso. After the record was closed, the parties filed position papers setting forth their arguments and setting forth the support for those arguments in the record. At some point, BPU Staff and the company apparently commenced settlement discussions. Other parties were not at the table and were not included in those discussions. It was only after an agreement on the major terms had been reached, that other parties were brought into the process. At that point the objections and comments of those parties were essentially ignored because agreement had been reached. In fact, at a status conference PSE&G refused to agree to extend the 180 day deadlines unless Board Staff committed to signing the Stipulation before the objecting parties had the opportunity to present their objections formally. The objecting parties were also not permitted to know who was at the negotiating table, why certain terms were included that differed from the positions presented on the record or how the various allocations included in the Stipulation were reached.

This procedure does not comport with the BPU's obligation to treat the public fairly and does not comport with due process. The parties to this action who were not at the negotiating table have no basis to understand how settlement terms were arrived at or why they are justified, given their variance from the record that had been created by the parties. They had no ability to understand what the Company was arguing to persuade Staff to accept its positions and no

opportunity to rebut those arguments. They had no ability to understand Staff's positions or learn why Staff accepted or advocated for or against certain terms.

While Staff may be free to communicate with some parties and not others, or to consider factors not in the record, this Board is not free to do so. Its decision must be based solely on the record established before the OAL or the Commissioner appointed to hear the matter. N.J.S.A. 52:14B-10(d); In re Petition for Review of Opinion No. 583 of Advisory Committee on Professional Ethics, 107 N.J. 230, 238 (1987). As the Appellate Division stated in New Jersey State Board of Optometrists v. Nemitz, 21 N.J. Super. 18, 29 (App.Div. 1952):

> Our courts have said that a judgment or order of an administrative agency "cannot be made to rest upon undisclosed evidence or information dehors the record which the parties in interest have had no opportunity to test for trustworthiness and explain or rebut." Pennsylvania R.R. Co. v. N.J. State Aviation Comm., 2 N.J. 64, 72 (1949); National Dairy, etc., Co. v. Milk Control Board, 133 N.J.L. 491, 494, 495 (Sup. Ct. 1945); Scaduto v. Bloomfield, 127 N.J.L. 1 (Sup. Ct. 1941).

In fact, it is "firmly settled in our system of jurisprudence that there must be sufficient or substantial competent and relevant evidence to support the findings of fact and reasonableness of the rates established by the Board." Central R. Co. v. Department of Public Utilities, 7 N.J. 247, 260 (N.J. 1951).

The Board may not simply rely on Staff's recommendation in this case, when Staff's analysis was not made available to other parties to rebut. See, N.J. Dept. of Public Advocate v. N.J. Bd. Of Public Utilities and Hackensack Water company, 189 N.J. Super. 491, 517 (App. Div. 1983) (rejecting Rate Counsel's objection to the Board's reliance on Staff's recommendations because "all parties knew the staff's position and each had ample opportunity to rebut any position of the staff with which there was disagreement."). Nor may the Board rely on representations made by the Company that objecting parties have not had the opportunity to challenge. I/M/O the Revision of Rates Filed by Redi-Flo Corp., 76 N.J. 21, 24 (1978)

(remanding the review of Redi-Flo's fuel adjustment clause based on "[t]he inescapable inference …that the Board neglected to pursue the normal procedures solely on the strength of the company's undocumented representation…," noting that "such an action seems virtually inconceivable in light of the consistent line of authority requiring close scrutiny of a utility's books and records.") Here, Staff's positions, as now reflected in the April 26 Stipulation, were never made known to the parties. Staff did not file testimony. While Staff participated at the evidentiary hearings, the ultimate positions as set forth in the April 26 Stipulation could not have been gleaned from Staff's questions at the hearings. Staff declined to file position papers after the hearing. Thus, the first time these positions were known to the parties that were not invited to participate in the settlement discussions was on April 18, when a draft was circulated. By that point, the framework and major terms had already been agreed to based on discussions between Staff and the Company that have not been disclosed to the non-participating parties. Once the draft Stipulation was circulated, the objections raised by other parties were not meaningfully considered. Only very minor changes were made, and objecting parties were not permitted any meaningful input or negotiation.

This Board, therefore, may not simply rely on the Stipulation or on Staff's recommendations contained therein. The Legislature has expressly reserved to agency heads, in this case the Board itself, the power to decide contested cases. N.J.S.A. 52:14F-7; In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 94 (N.J. 1982). The Board must therefore make findings of fact, based on the record created at the evidentiary hearings to support its decision. Of course, as set forth more fully in this brief, Rate Counsel maintains that the terms of the April 26 Stipulation are not supported by the record and are inconsistent with established law and policy. The terms of the April 26 Stipulation should

therefore be rejected, or the board's approval should be conditioned on revisions to the Stipulation that conform to the evidence and the law.

POINT II

THE PROPOSED RESOLUTION OF S4AE IS CONTRARY TO NEW JERSEY LAW AND POLICY.

A. The April 26 Stipulation, if Adopted, Would Violate the Board's Duty to Regulate a Public Utility, as it Would Allow PSE&G to Operate the S4AE Program With No Meaningful Oversight.

In New Jersey, the authority and duty to regulate public utilities is vested in the Board. Under N.J.S.A. 48:2-13 (a), the Board is granted "general supervision and regulation of and jurisdiction and control over all public utilities … and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of [N.J.S.A. Title 48]." This authority extends to all aspects of a public utility's operations, including the utility's management, accounting practices, quality of service, and rates. N.J.S.A. 48:2-13, -16 to -16.4, -21 & -23; N.J.S.A. 48:3-1, -2 -3. As the New Jersey Supreme Court has noted, "N.J.S.A. 48:2-13 charges the Board with the task of overseeing the operations of all public utilities in accordance with the purposes of the Public Utilities Act, and foremost among these responsibilities is its duty to ensure that rates are not excessive." In re Redi-Flo Corp., Supra, 76 N.J. at 39.

The Board's responsibility for regulating State's public utilities is an important one. As the New Jersey Supreme Court has stated, "the system of rate regulation and the fixing of rates thereunder are related to constitutional principles which no legislative or judicial body may overlook." In re Industrial Sand Rates, 66 N.J. 12, 23 (1974). The Board is responsible for protecting the property rights of both the utilities and their customers:

> … if the rate for the service supplied be unreasonably low it is confiscatory of the utility's right of property, and if unjustly and unreasonably high … it cannot be permitted to inflict extortionate and arbitrary charges upon the public.

Id. at 24. In this regard, the New Jersey Supreme Court has recognized that the rights subject to the Board's protection "inher[e] in the public which pays as well as the entity that receives." Id., citing New York, Ontario &Western R.R. Co. v. Livingston, 238 N.Y. 300, 306, 144 N.E. 589, 591 (1924) (opinion by Cardozo, J.).

The Board's responsibilities are not delegable. A New Jersey regulatory agency may not cede its authority to private entities that are not accountable to the public. N.J.S.P.C.A. v. N.J. Dep't of Agric., 196 N.J. 366, 400 (2008); N.J. Dep't of Transp. v. Brzoska, 139 N.J. Super. 510, 513 (App. Div. 1976).

If the Board approves the proposed resolution of the S4AE it will be ceding its authority and duty to regulate PSE&G's administration of this program. As detailed in the sections below, PSE&G would be allowed to operate the program and distribute ratepayer-funded subsidies to entities chosen by the Company, with no clear criteria or standards for selecting the recipients or defining the amounts of the subsidies, and with only limited oversight by the Board. Given that this program has, in the past, been the subject of allegations of mismanagement, this lack of oversight is particularly troublesome. See, BPU Dkt. No. EO12010013.

The Board has an overarching statutory duty to ensure that safe, adequate, and proper utility services are provided at reasonable, non-discriminatory rates to New Jersey residents. In fostering and ensuring that ratepayers receive such service, the Board must not only endeavor to assist in the state's development of competitive energy policies that promote clean renewable energy sources, but must simultaneously strive to ensure that the programs proposed by utility companies are run in an efficient, economic and cost effective manner for the benefit of ratepayers. N.J.S.A.48:3-87(k) and (l)(8). It was for this fundamental balancing of interests that the Board was created, and in its role as mediator and arbitrator, it must ensure that no one

interest, utility versus ratepayer is unjustly jeopardized or ignored. See, Rate Counsel's April 15, 2013 S4AE Position Paper ("S4AE Position Paper"), pp. 30-38.

While the proposed programs contemplated by PSE&G under the S4AE are geared to promote clean energy sources, the Stipulation provides insufficient detail and Board oversight to adequately protect the interests of New Jersey ratepayers, who will be funding the program contemplated herein for well over a decade. Such a result is manifestly unfair, untenable and violates the Board's statutory obligations.

1. The Stipulation Provides for No Cost Caps, Either in Investment or Rate Impact.

The Stipulation does not limit the amount of money that PSE&G may spend on this program. While the Stipulation states that PSE&G "estimates" that its "initial investment" will be $247.2 million, there is nothing in the Stipulation that limits PSE&G to spending that amount. Indeed, there is no cap at all on the amount they can spend. Similarly, while "rate impacts" are included in the Stipulation, they are merely "estimates" based on unspecified spending levels. To be consistent with its obligation to oversee utility programs and ensure reasonable rates, the Board should specify, if it approves the Stipulation, that the $247.2 million is the total amount PSE&G is authorized to spend on this program.

2. The Stipulation Fails to Provide Sufficient Definition or Oversight of How Projects Will be Selected for Each Program Segment.

The Stipulation lacks a sufficient description of the program segments and the objectives and criteria that will be used to determine the specific projects that will participate in the program.

While "landfills and brownfields" are defined generally by statute N.J.S.A. 48:3-51; N.J.S.A. 13:1E-3, N.J.S.A. 58:10B-23, there are no criteria defining which sites would qualify

for this segment of the S4AE program.[7] The program rules simply state that sites will be "evaluated" by a number of factors which may include ease of permitting, ease of interconnection, site conditions, and other factors as determined by PSE&G. April 26 Stipulation, Attachment E, p. 2 of 5. "Underutilized government facilities" and "innovative" parking lot applications are not defined. Pilot programs on "grid security/storm preparedness" were not included in the petition and are not defined in the Stipulation. The Stipulation should define in detail what types of projects will eligible for each segment.

Similarly, the Stipulation states that projects will be selected based on the "objectives" of each program segment. April 26 Stipulation, para. 7, p. 13; par. 13-15, p. 14 and par. 21, p.15. These objectives are not defined and thus there is no ability to assess the prudency of PSE&G's selections. Accordingly, if the Board approves this stipulation, it should impose specific criteria to which PSE&G's selections must adhere. The objectives and criteria should be established and approved by the Board in advance and not by PSE&G as it goes along.

3. The Stipulation Provides Insufficient Standards For The Selection Of Vendors And No Contract Terms.

Once a site is selected, the financial terms are solely based on PSE&G's negotiations with the site owners. There are no standards established for the contracts with or payments to the site owners or when "additional payments" will be allowed. Apil 26 Stipulation, par. 9-11, p. 13; par. 17, p. 14; par. 18-23, p. 15. If the Board decides to approve the stipulation, Rate Counsel and the Board should at least be provided with a "Sample Lease" and/or "Sample Contracts" for review prior to approval of this process.

[7] As discussed below in Point II. B. 2, the Stipulation does not provide for the application of the criteria established by BPU for other landfill/brownfield sites to sites accepted into this program.

4. The Stipulation Allows Use Of PSE&G And Affiliated Resources With No Standards To Prevent Unfair Charges And "Double Dipping".

The Stipulation is silent on the mechanism to be used to ensure against the company's double-recovery of costs. For example, there is no discussion of how overhead costs that are allocated to the S4AE Program, which are recovered in base rates, costs that are shared among various programs, and costs recovered through surcharge rider mechanisms will be accounted for or treated. For instance the Stipulation states that "PSE&G may procure the equipment directly … to provide engineering, permitting and construction services", however, the Stipulation is silent as to under what circumstances this action will occur. April 26 Stipulation, par. 18, p. 15. Likewise it is silent on how the equipment inventory will be accounted for. Thus, PSE&G could seek to recover administrative costs as well as other internal labor costs without the ability to ensure ratepayers are not being charged twice for costs of labor and equipment.

Likewise, the Stipulation at states that PSE&G will "…initiate the PJM interconnection process, and …seek to identify the interconnection costs associated with viable sites as determined by PSE&G", and that PSE&G also plans to perform the interconnection work and "…may perform portions of the other work." April 26 Stipulation par. 19-20, p. 15 and par. 25-26, p. 16. The Stipulation should therefore also provide for appropriate accounting with respect to interconnection costs to ensure double recovery is not permitted.

5. The Stipulation Does Not Include Adequate Reporting Requirements.

The Stipulation requires PSE&G to supply project construction updates on a quarterly basis. However, the Stipulation is silent concerning any cost or accounting information to be supplied to the Board in these reports. The reporting requirement also neglects to include initial budgets and timelines or any additional milestones or benchmarks that the Board may deem

useful to adequately assess the progress of the construction and justification of the costs to be incurred. By comparison, the Board approved the original Solar-4-All Program with specific reporting requirements that provided appropriate regulatory oversight.

6. The Stipulation Contains Inadequate Protections Regarding Program Rules And Rule Changes

The Stipulation allows PSE&G to change program rules with little or no oversight. To make program changes, there is merely a requirement that PSE&G file with Board Staff and Rate Counsel ten days before making the changes. If Board Staff does not object, the changes go into effect. This is insufficient.

If the Board determines to adopt the Stipulation it should require that:

> Notice of proposed program changes, amendments and should be proposed with specificity and filed with all Parties with a minimum of 30 days allowed for comments. Any significant change, amendment, modification, or substitution shall only be made with Board approval. Before seeking such approval the Company will consult with the Parties, and seek consent to the change, amendment, modification or substitution to the standard or requirement.

7. The Prudency Review In The Stipulation Is Truncated And Inadequate And Fails To Meet Constitutional Standards.

The Prudency review set forth in the Stipulation is wholly inadequate to protect the constitutional rights of ratepayers. The Stipulation simply calls for an "annual filing" that will include a reconciliation of the amounts collected and spent, and will "present actual costs incurred since the previous annual review." April 26 Stipulation, par. 36. The Company agrees to provide information "consistent with" the minimum filing requirements of the current programs rather than complying with the minimum filing requirements. Id., par. 37. The

process allows for an opportunity for discovery and filed comments, but not for evidentiary hearings. Id. This is clearly insufficient. Id.

First, it is impossible to meaningfully assess "reasonableness and prudency" when the Stipulation provides no standards whatsoever by which to assess the administration of the program or its costs. As set forth above, the Stipulation provides unfettered discretion in PSE&G over project selection, contract terms and contractor hiring. In the absence of criteria, a determination after the fact that a choice was unreasonable will be very difficult, rendering the review inadequate to ensure the public's interest is protected and the rates charged are reasonable.

The process is also insufficient. While a tie to a rate case should be required, See In re Industrial Sand Rates, 66 N.J. 12, (1974) at the very least, the opportunity for resolution as a full contested case consistent with the Administrative Procedure Act N.J.S.A. 52:14B-2 should be required, and only costs deemed reasonable and prudent should be recoverable.

B. The Proposed S4AE Program Violates New Jersey Energy Policy

1. The Proposed S4AE Program, Like the Originally Filed Program, Provides Unfair Ratepayer Funded Subsidies and Contravenes the Board's Policy Favoring Reliance on Competitive Mechanisms to Promote the Development of Solar Energy at the Lowest Possible Cost.

Rate Counsel's S4AE Position Paper set forth in detail the State's and the Board's long-term policy of moving toward reliance on competitive market mechanisms to promote the development of solar energy at the lowest possible cost, and the fundamental inconsistency of the proposed S4AE with that policy. S4AE Position Paper, p. 10-19. The proposed April 26 Stipulation remains contrary to the important State and Board objectives of assuring that

ratepayer-funded subsidies are kept at the lowest possible level through competition.[8] Here, PSE&G will have two competitive advantages over the solar delevelopers: (1) PSE&G will receive a guaranteed 10% return on its investment; and (2) PSE&G has no cap on the amount it can spend.

The proposed "stipulated" S4AE would follow the same basic structure as the originally proposed program—PSE&G would invest in solar projects to be selected by the Company, and would recover all costs through a "pass-through" rate mechanism. April 26 Stipulation, par. 7-37. The currently proposed S4AE, like the originally proposed program would allow PSE&G to develop solar facilities without cost or risk, because the Company would be "backstopped" by captive ratepayers. See S4AE Position Paper, p. 14-16.

As discussed in Point II. A. 2 above, the April 26 Stipulation does not include clear standards for the selection of projects or vendors. It is nevertheless clear that the selection processes PSE&G is proposing to follow will not result in costs that are as low as possible based on market conditions.

For the "Landfills/brownfields" segment, which represents 42 MW of the proposed total program capacity of 45 MW, and the "Underutilized government facilities" segment, representing 1 MW, the April 26 Stipulation provides that PSE&G will select sites based on "a number of factors which may include ease of permitting, ease of interconnection, site conditions,

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[8] The Board has repeatedly recognized the importance of moving toward market-based mechanisms for meeting the State's renewable energy and solar energy goals. In its August 2008 Order addressing utility-supported solar programs, the Board specifically stated that its objective was "to reduce reliance on rebates and to transition to a more market-based means of providing incentives towards achieving the solar RPS." I/M/O the Renewable Energy Portfolio Standard, BPU Dkt. No. EO06100744, Order at 3 (Aug. 7, 2008) ("2008 Utility Solar Order"). More recently, in the Board's May 2012 Order adopting the recommendations of its Office of Clean Energy ("OCE") concerning proposed extensions of utility-supported solar programs, the Board found that " [t]he OCE's recommendations, if properly executed, will move the RE program closer to a market-based approach and, accordingly, reduce ratepayer subsidies as required by EDECA. I/M/O the Review of Utility Supported Solar Programs, BPU Dkt. No. EO11050311V, Order at 28 (May 23, 2012) ("2012 Utility Solar Extension Order").

and other factors as determined by PSE&G," and, further that the Company "will give favorable consideration to those projects in which the site owner and solar contractor have coordinated and prepared a fully engineered, ready to build project." April 26 Stipulation, par. 7 & Attachment E, p. 2 of 5. Based on these provisions, it appears that cost will be at most a secondary factor in project selection. Furthermore, the proposed S4AE program rules provide that "Prior to Board Approval PSE&G may begin site selection, site evaluation, and bid processes, and contract and lease negotiations." April 26 Stipulation, Attachment E, p. 2 of 5 (emphasis supplied). This provision apparently would allow PSE&G to designate for inclusion in the S4AE projects that have already been selected and negotiated by PSE&G based on unknown criteria. This bears no resemblance to a market-based mechanism that will assure fair competition and minimize ratepayer costs.

There are also no meaningful provisions to employ market-based mechanisms once a site is selected. While the April 26 Stipulation states that PSE&G will use a "competitive bidding process" to select vendors to provide engineering, construction and other services, the actual description of this process as included in the proposed S4AE program rules is wholly inadequate to assure that bids are accepted on a least cost basis. This description, only lists six brief "bullet point" items that must be included in proposals submitted to the Company, and does not describe the criteria or standards PSE&G proposes to use to select the winning bids. April 26 Stipulation, Attachment E, p. 2-3 of 5. This so-called "competitive bid process" does not even pretend to commit the Company to selecting the lowest-cost qualified bidder.

One additional cost component, payments made to site owners, apparently would be without any market-based process. The April 26 Stipulation provides for lease payments and "additional payments." April 26 Stipulation, par. 9-11 & Attachment E, p. 3 of 5. These

additional payments apparently would be negotiated by PSE&G after the site was selected. There are no provisions that would make the amount of these payments subject to any competitive or approval process. Id.

The remaining two segments the "Pilot program on grid/security/storm preparedness," representing 1 MW of the proposed S4AE, and the "Pilot program for innovative parking lot applications," representing 1MW of the program, also apparently would be implemented with little or no reliance on competition to minimize costs. For these segments, PSE&G is proposing to select among proposals "based on the objectives and criteria established for each segment." April 26 Stipulation, Attachment E, p. 4 of 5. Since those "objectives and criteria" are not described anywhere in the April 26 Stipulation or the accompanying attachments, PSE&G is not committing to any particular selection criteria. The participants in the two "pilot" segments would therefore be selected based on criteria which may, or may not, include cost.

As was the case for the originally filed S4AE, the lack of meaningful price competition in the current proposal would result in high costs for PSE&G's ratepayers. Rate Counsel's S4AE Position Paper noted that, of the originally proposed program segments, only the segment for warehouse roof projects, with an average cost of $3,700 per kW, was even remotely economic given current market conditions. S4AE Position Paper, p. 16. For the currently proposed S4AE program, PSE&G is estimating initial investments averaging nearly $5,500 per kW. [9] The landfills/brownfields segment would involve estimated initial investments averaging approximately $5,269 per kW.[10] PSE&G has not provided the estimated costs for each of the remaining three segments individually. On a combined basis, PSE&G is estimating that the 3

[9] Attachment A, page 2 of 7 to the April 26 Stipulation shows, in Column (1), shows an estimated $247,223,000 in initial investments (i.e., excluding the costs of replacement inverters to be installed in 2023 through 2026), for an average initial investment of about $5,494 per Kw over the total 45 MW size of the program.

[10] Attachment A, page 4 of 7 to the April 26 Stipulation shows an estimated initial investment of $221,285,000 to develop the 42 MW of landfills/brownfields projects, for an average investment of about $5,269 per kW.

MW to be developed under these three segments would involve initial investments of nearly $26 million—for an average cost approximately $8,647 per kW.[11] As explained at page 17 of Rate Counsel's S4AE Position Paper, costs of this magnitude would appear to include substantial ratepayer-funded subsidies for research and development. The currently proposed S4AE, like the originally proposed program, transfers the costs and risks of product development from a few selected market participants to PSE&G's ratepayers.

The S4AE program, as modified in the April 26 Stipulation remains in opposition to State's and the Board's policy objective of increase reliance on competitive market mechanisms to promote solar development. The modified S4AE remains unfair to other market participants, who would be required to compete against a subsidized, price-insensitive entity, and remains an unreasonable burden on PSE&G's ratepayers, who would be required to fund the subsidies. For the same reasons that were explained in detail Point I.A.of Rate Counsel's initial S4AE Position Paper, this program would undermine many years of progress toward the goal of reliance on competitive markets to meet the State's renewable energy and solar energy goals.

2. The Proposed S4AE Program Violates the Provisions of the SEA and the Implementing Board Order Concerning Landfill Projects.

The "Landfills/brownfields" segments of the proposed S4AE is contrary to subsection (t) of the Solar Energy Act of 2012 ("SEA") P.L. 2012, c. 24, N.J.S.A. 48:3-87(t).
Further, the proposed landfills/brownfields segment (1) would pre-empt another proceeding before the Board to establish an incentive mechanism for projects on landfills, brownnfields, and areas of historic fill, and (2) is inconsistent with the process recently established by the Board for certifying that such projects are located on properly remediated sites.

[11] Attachment A, page 6 of 7 to the April 26 Stipulation shows an estimated initial investment of $25,940,000 to develop the 3 MW in the remaining three segments, for an average investment of about $8,647 per kW.

With regard to the first issue noted above, the SEA directs the Board to "establish a financial incentive that is designed to supplement the SRECs generated by the facility in order to cover the additional cost of constructing and operating a solar electric power generation facility on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility." N.J.S.A. 48:3-87(t)(1). In October 2012 the Board initiated a proceeding for this purpose. I/M/O the Implementation of L. 2012, c. 24, the Solar Act of 2012, BPU Dkt. Nos. EO12090032 et al., Order Initiating Proceedings at 2 (Oct. 10, 2012). On January 24, 2013 the Board issued a further Order concerning the implementation of subsection (t) of the SEA. I/M/O the Implementation of 2012, c. 24, the Solar Act of 2012, BPU Dkt. Nos. EO12090832V et al,. (Jan. 24, 2013) ("January 24, 2013 Solar Order"). In that Order, the Board found that "the process for determining appropriate incentives is not complete at this time," and accordingly directed its Staff to continue working with the New Jersey Department of Environmental Protection ("NJDEP"), the New Jersey Economic Development Authority, and other stakeholders to "develop a process to determine appropriate incentives for solar generation on properly closed landfills, brownfields, and areas of historic fill." January 24, 2013 Solar Order at 13.

The Board has specifically established a process for determining the need for, proper level of, and form of financial incentives for these types of projects and has ruled that further proceedings are needed in order to make such determinations. The proposed S4AE would effectively allow PSE&G to set the level and form of incentives for projects in the "landfills/brownfields" segment. This is contrary to the statute and the January 24, 2013 Solar Order.

The April 26 Stipulation also contains no provisions to assure that the subsidies provided under the S4AE include only "the additional cost of constructing and operating a solar electric

power generation facility"on a landfill or brownfield. N.J.S.A. 48:3-87(t)(1). As the Board recognized in the January 24, 2013 Solar Order, this language does not permit the Board to create subsidies to cover the costs of remediation and closure. January 24, 2013 Solar Order at 7. As noted above Point II. A. 3 above, April 26 Stipulation would allow PSEG to pay both lease payments and "additional payments" to site owners, with no standards for determining the appropriate amounts of such payments. Without such standards, there is no assurance that these payments will not be set at levels that include subsidies for remediation and closure.

With regard to the second issue noted above, the April 26 Stipulation is contrary to the provisions in SEA subsection (t) that are intended to assure that ratepayers are subsidizing only those projects that are located on properly closed landfills and other properly remediated sites. Specifically, the SEA provided that the Board, no more than 180 days after the enactment of the SEA,

> shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility, ….

N.J.S.A. 48:3-87(t)(1). The above provision was implemented by the Board in the January 24, 2013 Solar Order. Under the certification program adopted by the Board a solar project on a landfill, brownfield or area of historic fill may receive SRECs only if the Board has issued a "full certification" based on a determination by the NJDEP that the site has been fully remediated. January 24, 2013 Solar Order at 11, 13.

The April 26 Stipulation provides that PSE&G would "seek Board certification of project location pursuant to [the January 24, 2013 Solar Order] by submitting an application to the Board

for NJDEP review and approval by the Board." April 26 Stipulation, par. 5. See also Id., Attachment E, p. 1 of 5. There is, however, no provision that would require PSE&G to receive full certification before making significant investments in a landfill/brownfield project. As discussed above it would appear from the April 26 Stipulation that PSE&G could proceed with site selection, site evaluation, bidding and contract and lease negotiations, even construction, before certification was received, and indeed may have begun some of these activities already. There does not even appear to be a provision that solar projects will not be operated without full certification. This is contrary to the intent of both the SEA and the January 24, 2013 Solar Order. Thus, the S4AE could result in ratepayer subsidies for projects on sites that have not been properly remediated, and, further, those subsidies would not be offset by proceeds from the sale of SRECs. Without provisions assuring that ratepayer-funded subsidies will support only those projects that are properly certified as being fully remediated, the proposed S4AE is neither reasonable nor consistent with New Jersey law and policy.

C. The S4AE Program Portion of the Settlement Agreement is Not Supported by Record Evidence.

An independent examination of the record in S4AE reveals that there is no record evidence for many of the provisions included in the April 26 Stipulation.

As initially envisioned in its Petition, the Company would have developed 136 MW of solar photovoltaic systems. As stipulated in the agreement before the Board the "Program Size will be capped at 45 MW (dc)." (PS Stipulation, para. 1.) As initially envisioned in its Petition, the Company's S4AE program's capital investment would have been approximately $690 million over a five-year period. As stipulated in the agreement before Board, "The capital investment (excluding AFUDC over the initial build-oput period is estimated to be $247.2 million." (PS Stipulation, para. 1.) The proposed, consolidated stipulation notes that the record

evidence regarding this significant change in size and scope of the program "is a result of a negotiation between [the signing] parties reflecting the different views as set forth in the testimony presented by several parties indicating support for PSE&G's continued involvement in solar development, at a reduced Program size and scope." (PS Stipulation, para. 1.) However, Rate Counsel's testimony did not support a "reduced Program size and scope" but concluded that the S4AE program was not needed in order for the State to achieve its solar energy goals. The Company's testimony on the other hand, urged approval of the program in its entirety.

There is therefore no specific record evidence supporting a finding that the reduced size of the program, or the new allocations between segments, as contained in the stipulation, will aid in achieving the requirements set by statute or the goals contained in the EMP. No evidence exists regarding the effect of the reduced program's impact on the SREC market. It is not axiomatic, when dealing in a free marketplace, that size and scope of a program such as S4AE are proportional in effect. Therefore, a simple reduction in size may have unanticipated and, in this instance, unexamined effects on the marketplace and program costs, ultimately affecting ratepayers. Further, no evidence exists in the record establishing that the estimate of required capital investment contained in the stipulation will support the reduced size of the program as proposed in the stipulation. The "negotiation" between the signatories to the stipulation represents an agreement among special interests, those who will directly benefit from the program. The Board cannot make a finding that the modified program and the allocations agreed to as set forth in the Stipulation are reasonable because no record evidence exists as to the effects of the re-sized program on the statutory requirements: the goals as set forth in the EMP; the rates paid by ratepayers and the marketplace for solar systems.

While there is no record evidence for the reduction in the total size and scope of the program under the stipulation, there is also no record supporting the size and scope of the changes to the individual programs. The Petition provided for a 90 MW Landfill and Brownfield program which has been reduced to 42 MW. The Petition provided for a 20 MW warehouse roof program which has been eliminated. The Petition provided for a 25 MW parking lot program which has been reduced to 1 MW and limited to "innovative" applications. The Petition provided for a 1 MW pilot and demonstration program on energy storage which has apparently been changed to "pilot program on grid security/storm preparedness." Finally, the Petition did not include a program for "underutilized government facilities," but the stipulation provides for a 1 MW program for this purpose. Thus, the stipulation completely changes the program, not just in size and scope, but by the very nature of the program and its intended goals. There is no evidence establishing what some of these program changes are designed to achieve because they weren't included in the original Petition. There is therefore nothing in the record to support the Board's approval of these new programs. Literally, there is no description of what the "grid security/storm preparedness" pilot entails or how that meets the definition of energy efficiency and conservation programs in N.J.S.A. 48:3-98.1, et seq; or serves the objectives of the Energy Master Plan.

The stipulation discusses these novel programs as if they were contained in the original Petition, stating generally that "the parties expressed an interest in exploring the evaluation of the innovative use of solar technologies through pilot programs." (Stipulation, par. 3) However, these new proposed program segments were not in the original Petition, and were not the subject of testimony and examination during the hearings and, as a result, the Board cannot assess the impact of these new programs upon ratepayers to achieve the necessary balancing of interests

required to find these proposed programs reasonable. There being insufficient evidence in the record to allow the Board to exercise its statutory authority to assure the proper balance between the interests of the utility and the ratepayer, the stipulation must be rejected.

POINT III

THE PROPOSED RESOLUTION OF SLIII IS CONTRARY TO NEW JERSEY LAW AND POLICY

A. The Proposed SLIII Program Violates New Jersey Energy Policy

1. The Proposed SLIII Program, Like the Originally Filed Program, Fails to Comply with the Requirements Established by the Board to Assure the Consistency of Such Programs with State Policies Favoring Reliance on Competitive Market Mechanisms to Meet Solar Energy Goals.

In an Order issued on May 23, 2012, the Board established a number of criteria for utility-supported solar programs including solar loan programs. I/M/O the Review of Utility Supported Solar Programs, BPU Dkt. No. EO11050311V, (May 23, 2012) ("2012 Utility Solar Extension Order"). As explained in detail at pages 11-16 of Rate Counsel's April 15, 2013 SLIII Position Paper, the criteria adopted by the Board were consistent with, and intended to advance, the State's policy of relying on competitive market mechanisms to meet the State's solar energy goals.

The revised SLIII program defined in the April 26 Stipulation, like the originally filed SLIII program, does not comply with two of the requirements established by the Board for solar loan programs—(1) it does not incorporate a competitive process that will "provide for the lowest achievable and available cost within the market segments," and (2) it does not assure that solar developers, and not ratepayers, will be responsible for all administrative costs associated the program. 2012 Utility Solar Extension Order at 27, par. k & q.

In the originally filed program, PSE&G is proposing to select program participants through a solicitation process in which prospective participants would bid proposed SREC floor prices with their loan applications. This process did not meet the Board's requirement for a competitive process because PSE&G proposed to conduct this process "in house," without the

independent oversight required to assure the integrity of the process. See SLIII Position Paper, p. 17-19. PSE&G is now proposing to retain a "Solicitation Manager" to review and rank bids and provide "guidance" to PSE&G. April 26 Stipulation, par. 49 & Attachment F, p. 2 of 8. However, PSE&G would conduct the solicitations and, apparently, would retain authority to select the winning bidders. Id. The stipulation provides that the Solicitation Manager would "also provide guidance to the Board Staff and Rate Counsel for review and comment." April 26 Stipulation, par. 49. However, no role is specified for Board Staff or Rate Counsel in the bid selection process; it appears that PSE&G is reserving the right to make the ultimate decisions with regard to bid selection.

The modified solicitation process remains non-compliant with the Board's requirement. As discussed in detail in at pages 17-18 of Rate Counsel's SLIII Position Paper, independent oversight is necessity to assure the integrity of the solicitation process, and this is particularly true for PSE&G in light of recent allegations, albeit unproven, of failures to appropriately manage ratepayer-funded programs. See BPU Dkt. No. EO12010013. Since the proposed solicitation process lacks a key element to assure its integrity, it is not a competitive process that will "provide for the lowest achievable and available cost" consistent with the market, as required by the Board.

2. The Proposed SLIII Program Violates the Provisions of the SEA and the Implementing Board Order Concerning Landfill Projects.

As discussed in Point II.B.2 above, the Board is currently conducting a proceeding, mandated by subsection (t) of the SEA, N.J.S.A. 48:3-87(t) to consider the need for, proper level of, and form of financial incentives for solar projects on landfills, brownfields and areas of historic fill. PSE&G is proposing to allocate 5 MW of the SLIII program capacity to a "landfills/brownfields" segment. April 26 Stipulation, par. 42, 50. PSE&G is proposing to rank

projects by SREC floor price bid separately for each segment, thus allowing the Company to select higher-priced bids for some segments than for others. April 26 Stipulation, Attachment F, p. 3 of 8. This methodology will allow PSE&G to provide higher subsidies for landfill or brownfield projects than for projects in other segments. In effect, PSE&G, rather than the Board, will be determining the incremental subsidies to be granted to these types of projects. This is contrary subsection (t) of the SEA, which, as discussed above, requires this determination to be made by the Board.

In addition, the revised SLIII program would allow participation by borrowers who have not received full certification that the site qualifies as a fully remediated landfill or brownfield. As discussed in Point II.B.2 above, subsection (t) of the SEA requires such certification to assure that subsidies for solar projects on landfills, brownfields and historic fill areas are provided only for those projects that are located on properly remediated sites. Under the proposed SLIII, PSE&G would allow developers to submit bids without prior certification. A prospective borrower could participate in a solicitation, be "conditionally accepted," and then take up to ten days to apply to the Board for certification. April 26 Stipulation, par. 41.e.

Even assuming that PSE&G will not advance funds to projects that have not receive full certifications, a point that is not made clear in the proposed SLIII program rules, the participation of projects without full certification in the solicitation process is problematic. Such participation eliminates an important safeguard against submission of bids that include remediation costs. In order to assure that incremental incentives to landfill or brownfield projects are limited to the increased costs of constructing and operating solar facilities on these types of sites, participation in the solicitations should be limited to developers for whom the costs of remediation and proper closure are already "sunk" costs. By allowing participation in SLIII by prospective borrowers

that have not received certification, the April 26 Stipulation eliminates an important safeguard against the submission of bids that include remediation costs.

B. The April 26 Stipulation Fails to Comply with the BPU 2012 Utility Solar Extension Order due to Inadequate Regulatory Oversight of the SLIII Program

According to its 2012 Utility Solar Extension Order, the Board adopted numerous recommendations from the Staff regarding administration of the EDC SREC Extension Programs. Specifically, as part of its ruling, the Board accepted that such programs should encompass certain criteria for the protection of ratepayers and in the public interest. 2012 Utility Solar Extension Order, at p. 26 – 28. Among these criteria, the Staff addressed program administration and cost:

> k. The loan or solicitation process shall be developed to provide for the lowest achievable and available cost within the market segments on a "competitive" basis that tracks the market rate and without a set floor price.
>
> q. The EDC's costs for developing, implementing and managing the extended EDC SREC program including all SREC transition fees, all loan serving fees, and any fees associated with the EDC's weighted average cost of capital, and all administrative fees would be paid for by the solar developer or the generation customer.

Id. at p. 27. However, as has been discussed in Point II. A, supra, concerning the S4AE, the April 26 Stipulation allows PSE&G to administer the SLIII Program with minimal Board oversight or appropriate safeguards to prevent excessive costs to be transferred to ratepayers. The SLIII Stipulation is also devoid of any reporting requirements, as currently required and performed by PSE&G under the Solar Loan I and II programs. The lack of reporting requirements, opportunity for evidentiary hearings in these sections, warrant rejection of the Stipulation and settlement in these matters.

Paragraphs 41 through 50 in the April 26 Stipulation outline the segmentation and auction processes for SLIII. April 26 Stipulation, at p. 22-25. Similar to the S4AE, the Stipulation fails to comprehensively define the segments. In particular, the segment titled "Residential-Aggregated" allows residential applicants to be 'comingled' with other applicants through a third-party aggregator and treated as 'non-residential applicants. Id., p. 23, par. 42.b. Further, PSE&G –after "review" by a Solicitation Manager selected by the Company- will combine the residential applications and assign a single SREC bid price and follow the requirements for a non-residential loan. Ibid. However, the stipulation is silent concerning any Board supervision of the selection processes or qualifications of third-party aggregators.

There is also no discussion or attachment to the stipulation regarding the credit requirements for the applicants. Previous Board-approved solar loan programs, among other items, included detailed supporting documents describing the credit qualifications of potential applicants, sample contract forms and a generic "FAQs" attachment for transparency of the loan process. I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Solar Energy Program and an Associated Cost Recovery Mechanism, BPU Dkt. No. EO07040278, (April 16, 2008); I/M/O Petition of Public Service Electric and Gas Company for Approval of a Solar Loan II Program and an Associated Cost Recovery Mechanism, BPU Docket No. EO09030429 (Nov. 10, 2009)

Other areas of concern with the administration of the program as described in the settlement is the apparent omission of Board review of the solicitation process (i.e., scheduling, bid selection) and any recourse regarding the "guidance" to be provided by the Solicitation Manager. April 26 Stipulation, par. 49. PSE&G retains the right to exclusively conduct the solicitations, select final bids and assess costs for the process with only cursory information to

the Board. Such a process violates the basic safeguards of utility regulatory oversight properly delegated to the Board by the Legislature**.** In re Redi Flo Corp., supra, 76 N.J. at 39; In re Industrial Sands Rates, supra, 66 N.J. at 23-24, See also discussion at Point II.A above. PSE&G also provides minimal information concerning the extent of the types of fees to be assessed on program participants. Id., at p. 27, par. 65. Paragraph 65 alludes to "…other potential fees…" that may be passed onto a participant but does not explicitly detail the nature of the fees. Ibid. Also not adequately explained in the settlement is whether any fees not recovered from program participants will be allocated to 'program costs' and passed onto ratepayers. The 2012 Utility Solar Extension Order[12]. specifically stated that administrative fees were to be absorbed by the loan participant or borrower. However, due to the overly broad nature of the language of the settlement, there is insufficient clarity as to who actually pays for some of the costs of the program.

C. The SLIII Program Portion of the April 26 Stipulation is Not Supported by Record Evidence

As set forth in detail in Rate Counsel's SLIII Position Paper there is insufficient record evidence that the SLIII as proposed by the Stipulation meets two of the key requirements established by the Board for utility-sponsored solar programs: it does not "provide for the lowest achievable and available cost within the market segments on a 'competitive' basis that tracks the market rate and without a set floor price," and it does not provide that "…all administrative fees would be paid for by the solar developer or solar generation customer." 2012 Utility Solar Extension Order, p. 27, par. k. and q.

In its Petition, PSE&G states that its SLIII proposal includes "a market-based method for determining the floor price at which to value the SRECs provided in repayment of the loans."

[12] I/M/O the Review of Utility Supported Solar Programs, BPU Dkt. No. EO11050311V (May 23, 2012) ("2012 Utility Solar Extension Order").

P-1, par. 7. As stated in the prefiled direct testimony of Joseph A. Forline, the Company is proposing two different solicitation processes, one for non-residential loans and one for residential loans. *P*-3, p. 5-6. However, the Company has submitted a stipulation to the Board for adoption that for the first time provides that the Company will "[H]ire an independent Solicitation Manager ("SM")…who will independently review…and provide guidance to the Company…" (Stipulation at para. 49) There is no record evidence before the Board as to the rules and procedure the SM will operate and the extent of the "guidance" it will provide to the Company in this process. Similar to the S4AE portion of the April 26, stipulation, there could be no record evidence regarding the rules and procedures to be followed by the SM before the Board as it was not part of the original Petition or before the Hearing Officer for decision. A comparison of the Solar Loan III Program Rules as filed with the Petition and those filed with the April 26, stipulation immediately reveal the extent of the changes to the proposed program. Without record evidence supporting (much less explaining) the changes to the program, the Board cannot adopt the April 26, stipulation. If this provision is designed to meet the fundamental flaw in the Petition of meeting the requirements of the 2012 Utility Solar Extension Order, p. 27, par. k. and q. noted above, those facts do not appear in the record.

Also, there is insufficient record evidence that the SLIII proposal meets the requirement that administrative and implementation costs be paid by the solar developer or solar generation customer. 2012 Utility Solar Extension Order, p. 27, par. q. In a schedule filed with Mr. Forline's prefiled direct testimony, the Company, in its Petition, claims that these fees will cover all but $456,271 of the Company's administrative costs. *RC-1*, p.8; P-*3*, Schedule JAF-SLIII-4. The Company is therefore seeking that amount from ratepayers. The Company also proposed for ratepayers to cover the administrative cost associated with selling the SRECS, estimated at

$970,000. *RC-1*, p. 20. The April 26, stipulation attempts to address these issues at paragraph 62 through 66. However, there is no record evidence that the fees described in the April 26 stipulation are sufficient to meet the requirement that administrative costs be paid for by developers or whether ratepayers would be responsible for paying carrying costs until these administrative costs are recovered through the collection of the fees.

As with the S4AE program, the April 26 stipulation makes significant changes to the SLIII program segments and allocation of capacity all without evidence of the cost, effects and ratepayer impact. The Company's petition proposes a 97.5 MW program allocated among four segments. The April 26, stipulation provides for a 97.5 MW program allocated among five segments. The additional segment, Residential-Aggregated by a 3rd Party, is a new segment for which there is no evidence in the record to support a Board decision to include the program. Nor is there evidence in the record supporting the allocation of total program size within the (now) five segments, or evidence of the impact on costs or how the program will achieve the statutory requirements authorizing the program and policy goals of the EMP.

The effect of the changes and additions to the SLIII program, recently included in the stipulation but changed from the program as described in the Petition, cannot be fully evaluated by the Board because there is no record evidence for the Board to consider. There being insufficient record evidence to allow the Board to exercise its statutory authority to assure the proper balance between the interests of the utility and the ratepayer, the stipulation must be rejected

POINT IV.

THE 10% ROE AS PROPOSED IN THE APRIL 26 STIPULATION FOR THE S4AE AND SLIII PROGRAMS IS NOT SUPPORTED BY THE RECORD EVIDENCE

Under N.J.S.A. 48:3-98.1 the Board is authorized to provide for reasonable rate treatment, including a return on equity ("ROE"), for energy efficiency and renewable energy programs. The statute requires the Board to determine the appropriate ROE for programs like the S4AE and SLIII programs based on evidence in the record. The Board has before it the April 26 stipulation providing for a 10% ROE for the SLIII program. The Company, in its Petition asked the Board for a ROE of 10.3% based on its last base rate case and a DCF Study submitted with its rebuttal testimony. Rate Counsel submitted testimony and a study supporting at most a 9.75% ROE. The record does not support the April 26 Stipulation's provision setting a ROE of 10% for the S4AE and SLIII programs.

Rates set by the Board, "can never be more than the reasonable worth of the service supplied; neither can it be fixed so low as to be confiscatory." Pub. Serv. Coordinated Transport. v. State, 5 N.J. 196, 225 (1950). In support of its Petition in requesting a ROE of 10.3%, the Company offered the testimony of Mr. Paul R. Moul, who performed the traditional rate base related studies in supporting the Company's request. S4AE Position Paper, p. 49; SLIII Position Paper, p. 38. As more fully set forth in Rate Counsel's SLIII Position Paper, the Company's proposed 10.3% ROE is too high for the S4AE and SLIII programs. Initially, Rate Counsel presented the testimony of Ms. Andrea Crane, who testified that the ROE should be no higher than 9.75%; arriving at her conclusion by independent analysis of capital market trends (including prior Board orders) and the investment risk associated with the S4AE and SLIII programs. S4AE Position Paper, p. 45; SLIII Position Paper, p. 33. Rate Counsel also submitted

testimony by Matthew Kahal including a DCF Study supporting an ROE no higher than 9.75%. The Company has offered no testimony supporting the April 26 Stipulation ROE of 10%.

Ms. Crane's recommendation of a ROE no higher than 9.75% was based upon analysis of S4AE and SLIII investment risk, current capital market conditions and, in part, upon recent Board decisions with respect to ROE awards. Board precedent in this area recognizes both policy considerations and market trends and therefore the market itself expects a degree of consistency and predictability in risk investment return decisions by the Board. Specifically, Ms. Crane referenced the decision in I/M/O Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1 and for other Appropriate Relief, BPU Docket No. ER11080469, OAL Docket No. PUC 09929-2011N (Order, October 12, 2012, p.5) where the Board approved a 9.75% ROE in a base rate case. This decision is but one of a series of Board decisions recognizing the declining cost of capital in utility risk investment, lowering the ROE granted for utility investment by other Board Orders to a 9.75% ROE, from the rate levels granted in 2010.[13] Moreover, the record supports a finding that the risk associated with this program, in which recovery is contemporaneous and virtually guaranteed, is lower than the risk of recovery for base rates thus suggesting a lower ROE than has been approved by the Board

[13] / I/M/O the Petition of South Jersey Gas Company to Implement an Accelerated Infrastructure Replacement Program and Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, BPU Docket No. GO12070670, (Order, February 20, 2013, p. 5).

I/M/O the Petition of New Jersey Natural Gas Company for Approval of the Safety Acceleration and Facility Enhancement Program Pursuant to N.J.S.A. 48:2-23, and for Approval of the Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and 48:2-21.1, BPU Docket No. GO12030255, (Order, October 23, 2012, p. 6).

I/M/O the Petition of Gordon's Corner Water Compnay, Inc. for Approval of an Increase in Rates for Water Service and Other Tariff Changes, OAL Docket No. PUC13868-12, BPU Docket No. WR12090807, (Order, April 29, 2013, p.2).

I/M/O the Petition of United Water Toms River, Inc. for Approval of an Increase in Rates for Water Service and Other Tariff Changes, OAL Docket No. PUC13365-12, BPU Docket No. WR12090830 (Order, April 29, 2013, p. 2).

in rate cases would be appropriate. See Mr. Mouls' testimony, T68:L13 -T70:L9 (March 18, 2013).

Demonstrating the continued downward trend of utility ROE awards, as recently as February 27, 2013 the Board itself argued for a 8.7% base ROE for the formula transmission rate implementation protocols in its Complaint filed with the Federal Energy Regulatory Commission in Delaware Division of the Public Advocate, et al. v. Baltimore Gas and Electric Company, et al., FERC Docket No. EL13-48-000, Complaint, February 27, 2013. Thus, if the Board were to adopt the April 26, stipulation with a 10% ROE for S4AE and SLIII, without specific evidence supporting that decision, the Board would be undercutting its own decisions and arguments made in contemporaneous proceedings. Without sufficient evidence to support its decision in this matter the Board's decision would be inconsistent with its ruling in other cases and would be arbitrary and capricious.

CONCLUSION

For the reasons set forth above and in Rate Counsel's previously filed S4AE Position Paper and SLIII Position Paper, Rate Counsel respectfully submits that the Board should reject the April 26 Stipulation and dismiss PSE&G's Petitions in both the S4AE and SLIII matters. In the alternative, if the Board determines to allow PSE&G to proceed with either program, the Board should do so subject to the following conditions:

For the proposed S4AE program:

- PSE&G's expenditures should be capped, with a limit of $247.2 million for capital investments.
- The criteria to be used by PSE&G to select projects should be defined in detail and should be approved by the Board.
- Standards for contracts, leases and other payments to site owners should be established, including sample leases and contracts approved by the Board.
- The Board should adopt accounting procedures and other measures to assure that ratepayers are not subject to double recovery for administrative and other internal labor costs, specifically including the costs of engineering, permitting construction and interconnection-related work.
- The Board should establish reporting requirements sufficient to assure adequate oversight of PSE&G's management of the program and the adequacy of its cost control measures, including project construction updates and costs and accounting information. All reports should be provided to Rate Counsel in addition to the Board.

- Program changes should be permitted only with a minimum of 30 days' notice and opportunity for comment by Rate Counsel and all other Parties. Significant program rule changes should be permitted only after Board approval.
- The Board should establish procedures for prudency review that allow appropriate regulatory review and meet Constitutional and statutory standards. The procedures should include minimum filing requirements, and should afford Rate Counsel and other interested parties opportunity for discovery and, if necessary, evidentiary hearing and briefing. The process should also require PSE&G to file a base rate case (electric and gas combined) within a reasonable period of time, to assure that all rate increases are implemented with the legally required "umbilical cord" to a base rate proceeding.
- Appropriate mechanisms should be established to assure that subsidies to landfill and brownfield projects cover no more that the increased costs of building and operating solar facilities on such sites, and do not include remediation and closure costs.
- PSE&G should not be permitted to expend funds or commit to any landfill or brownfield projects unless the proposed sites have received full certification pursuant to the Board's January 24, 2013 Solar Order.
- PSE&G should be limited to a reasonable rate of return that recognizes the minimal risks associated with this program, including an ROE not exceeding 9.75%

For the proposed SLIII program:

- The solicitation process should be managed by an independent Solicitation Manager, who should select the winning bidders subject to approval by the Board with input from Board Staff, Rate Counsel and the Company. Solicitations should be conducted in accordance

with detailed rules and protocols, to be specified in advance of any solicitations, that are sufficient to assure a fully competitive process.

- The Board should establish appropriate accounting procedures to assure that administrative costs can be tracked and are paid by borrowers, not ratepayers.
- The Board should establish procedures for prudency review that allow appropriate regulatory review and meet Constitutional and statutory standards. The procedures should include minimum filing requirements, and should afford Rate Counsel and other interested parties opportunity for discovery and, if necessary, evidentiary hearing and briefing. The process should also require PSE&G to file a base rate case (both electric and gas combined) within a reasonable period of time, to assure that all rate increases are implemented with the legally required "umbilical cord" to a base rate proceeding.
- The Board's approval should include detailed credit-worthiness requirements for applicants, sample contract forms, "FAQs" and other supporting documentation consistent with Board Orders approving PSE&G's Solar Loan I and Solar Loan II programs. In addition, the supporting documentation for this program should include clear disclosure of the fees to be charged to program participants.
- The proposed "residential-aggregated" program segment should be disallowed, or, alternatively, modified to eliminate provisions allowing individual residential projects to be combined and treated as a single borrower with a weighted average price, and to establish minimum creditworthiness and other qualificiations for aggregators.
- Participation in solicitation for the "landfills/brownfields" segment should be limited to projects proposed for sites that have received full certification pursuant to the Board's January 24, 2013 Solar Order.

- PSE&G should be limited to a reasonable rate of return that recognizes the minimal risks associated with this program, including an ROE not exceeding 9.75%

Respectfully submitted,

s/ Stefanie A. Brand
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Director, Division of Rate Counsel

May 9, 2013