

APPENDIX
Item 11



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

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

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN INCREASE IN ELECTRIC AND GAS RATES AND FOR CHANGES IN THE TARIFFS FOR ELECTRIC AND GAS SERVICE B.P.U.N.J. NO. 14 ELECTRIC AND B.P.U.N.J. NO. 14 GAS PURSUANT TO <u>N.J.S.A. 48:2-21</u> AND <u>N.J.S.A. 48:2-21.1</u> AND FOR APPROVAL OF A GAS WEATHER NORMALIZATION CLAUSE; A PENSION EXPENSE TRACKER AND FOR OTHER APPROPRIATE RELIEF)	DECISION AND ORDER ADOPTING INITIAL DECISION WITH MODIFICATIONS FOR GAS DIVISION
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)	DOCKET NO. GR09050422
)	OAL DKT NO. PUCRL-07599-2009N

APPEARANCES:

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

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

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

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

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

BY THE BOARD:

By Order dated June 7, 2010, the New Jersey Board of Public Utilities ("Board" or "BPU") approved a Stipulation of Settlement ("Stipulation") and an Initial Decision issued by Administrative Law Judge ("ALJ") Walter M. Braswell as they related to the electric ratepayers of Public Service Electric and Gas Company's ("PSE&G" or "Company") and its Electric Division

only. By this Decision and Order, the Board considers the Stipulation and Initial Decision rendered in this matter as they pertain to PSE&G's gas ratepayers and its Gas Division only; exceptions to the Initial Decision filed by PSE&G, the New Jersey Large Energy Users Coalition ("NJLEUC") and a group of electric cogeneration customers consisting of Bayonne Plant Holding, LLC, Camden Plant Holding, LLC, Newark Bay Cogeneration Partnership, LP and Elmwood Park Power, LLC (collectively referred to as "MEG" or "ECG"); and reply exceptions to the Initial Decision filed by PSE&G, ECG, NJLEUC, and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel").

BACKGROUND

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

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

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

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

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

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

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

Litigated Positions of the Parties

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

ECG/MEG

In its Initial Brief, MEG states that PSEG Power and ECG members are similarly situated: they are large volume customers who receive gas transportation service from PSE&G; they operate gas-fired combined cycle electric generating facilities throughout the State and within PSE&G's service territory; and they compete directly against one another to sell power in the market. MEG argues that despite such similarities, the rate paid and to be paid by ECG under the TSG-NF rate is more than three times as high as the rate paid by PSEG Power. (*Id.* at 2). PSEG Power pays a rate that is not a tariff rate or a negotiated rate. Rather, the rate currently applicable to PSEG Power was set in the Board's 2007 Order in the Company's annual BGSS proceeding². Specifically PSEG Power pays a flat rate of approximately \$.425 per dth for gas transportation service compared to the proposed TSG-NF of \$1.33 per dth³. PSEG Power pays no monthly customer service charge, SBC, RGGI, or CAC. (*Id.* at 2) In fact, PSEG Power is not paying PSE&G for any balancing charges. (*Id.* at 14). According to MEG, PSEG Power is also not subject to the rules and regulations in PSE&G's tariff, a written service agreement or balancing provisions. (*Id.* at 7). ECG pays a distribution charge, a customer service charge, the SBC, the RGGI and the CAC charges, and is subject to balancing charges under the TSG-NF. (*Id.* at 13-14).

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

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

¹ For each party, "IB" refers to the initial brief, and "RB" refers to the reply brief.

² I/M/O Public Service Electric and Gas Company's 2006/2007 Annual BGSS Commodity Charge Filing, BPU Docket No. GR06050409, Order dated July 17, 2007 (herein referred to as the "2007 BGSS Order")

³ Based upon the 12&0 Update submitted by PSE&G in the proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

PSE&G

The Company argues that the rates that PSE&G was required to charge PSEG Power, as well as the current rate, were approved by a series of Board Orders dating back to 1995.⁴ According to PSE&G, the language in the 2007 BGSS Order sets the GRC that PSE&G is required to charge PSEG Power through *at least* July 31, 2010, and therefore this issue does not belong in the instant proceeding. (PSE&G IB at 146, 150). PSE&G argues that the time for NJLEUC and ECG to appeal the Board's Orders in those previous cases has long since passed, since

⁴ The relevant Board orders are: I/M/O the Motion of Public Service Electric and Gas Company for Approval to Increase its Levelized Energy Adjustment Clause (LEAC), BPU Docket No. ER94070293, Order dated May 5, 1995; I/M/O PSE&G's Rate Unbundling, Stranded Costs and Restructuring Filings, BPU Docket Nos. EO97070461, EO97070462, and EO97070463, Final Decision and Order dated August 24, 1999 (herein referred to as "Restructuring Order") ; I/M/O the Petition of Public Service Electric and Gas Company's Proposal to Transfer its Rights and Obligations Under its Gas Supply and Capacity Contracts and Operating Agreements to an Unregulated Affiliate and Other Relief, BPU Docket No. GM00080564, Order dated April 17, 2002 (herein referred to as "2002 Gas Contracts Order"); and the 2007 BGSS Order.

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

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

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

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

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

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

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

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

Rate Counsel

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

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

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

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

Board Staff

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

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

NJLEUC

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

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

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

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

In its Reply Brief, NJLEUC reasserted the arguments in its Initial Brief, and added rebuttal to PSE&G's argument that NJLEUC was a party to the 2002 proceeding and was aware of the existence of the continued GRC. NJLEUC argues that the group participating in this proceeding did not exist during that time, but its counsel represented another party (Shell) with different interests in that matter. (*Id.* at 5). However, NJLEUC argues that because PSE&G did not

comply with the statutorily mandated notice and other provisions of N.J.S.A. 48:2-21, the necessary conditions precedent to the establishment of the GRC, the rate established is not a proper rate. (Id. at 6).

THE PROPOSED STIPULATION⁵

According to the information provided to the Board, the Company, Rate Counsel, Staff, MEG, and NJLEUC (collectively, the "Parties") held numerous in person and telephonic meetings to discuss settlement of this matter. On May 27, 2010, PSE&G, Rate Counsel, Staff, and NJLEUC (collectively, the "Signatory Parties") executed a Stipulation. Below are the provisions of the Stipulation as they relate to the gas division and gas ratepayers only⁶:

1. The Signatory Parties agree that gas distribution revenues should be increased by \$26.456 million based on a gas rate base of \$2.27 billion on an annual basis, effective for service rendered on and after the effective date of a written Board Order approving the Stipulation. The Signatory Parties agree that an appropriate return on common equity for this Stipulation is 10.3%. The Signatory Parties agree that an appropriate overall rate of return based upon a return on common equity of 10.3% is 8.21% with a 51.2% common equity component. As a result of this Stipulation including the change in Capital Adjustment Charges ("CAC"), the annual bill for the class average residential gas heating customer using 160 therms per winter month and 1,050 therms annually will increase from \$1,428.60 to \$1,442.92, an increase of \$14.32, or 1.00%.
2. The Company agrees that future distribution base rate filings will be made on a combined electric and gas basis.
3. PSE&G has withdrawn its request for a Pension Expense Tracker.
4. PSE&G has withdrawn its request for an expanded Infrastructure Program.
5. The Signatory Parties agree that the Company shall recover the deferred costs incurred during the 2009 test year that were associated with the implementation of its Customer Care System. Said Customer Care System 2009 test year deferred costs, in the amount of \$23.52 million, shall be amortized over four (4) years, at an annual rate of \$5.88 million. The Company shall not recover any carrying costs associated with the Customer Care System deferred 2009 test year costs. The Company shall not recover any deferred costs associated with its implementation of the Customer Care System that were incurred prior to the test year.
6. There are no changes to the Company's electric depreciation rates and gas depreciation rates.
7. The Signatory Parties agree that PSE&G's electric and gas Qualifying Projects placed in service through December 31, 2009 for its current, BPU-approved Infrastructure Program, BPU Docket Nos. EO09010049 and GO09010050, shall be rolled into the Company's electric and gas base rates as of the effective rate

⁵ Although described at some length in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

⁶ By Order dated June 7, 2010, the Board approved the Stipulation as it relates to PSE&G's electric ratepayers and its Electric Division only.

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

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

8. The Signatory Parties agree that the Company's CAC rates shall be provisionally changed to recover \$11.46 million for the period June 1, 2010 through December 31, 2010 (\$10.74 million for electric and \$0.72 million for gas), as set forth in the rate design detailed in Attachment A, pages 3-5 to the Stipulation. The Company's CAC rates shall be provisionally changed as set forth in Attachment A, pages 6-9 to the Stipulation, subject to refund with interest as defined in the April 28, 2009 Board Order for any over/under collections.
9. In the Company's last gas distribution base rate case, BPU Docket No. GR05100845, the parties agreed that the Company would amortize the accumulated depreciation reserve associated with Cost of Removal ("COR") at an annual rate of \$13.2 million. This \$13.2 million annual rate amortization would continue for a period of sixty (60) months, beginning with the implementation of the new base rates resulting from that prior gas distribution rate case. This sixty-month amortization period will expire in October 2011. The Company agrees not to change the rates for this expiring amortization without BPU approval.
10. The Signatory Parties agree that the Company shall file with the Secretary of the BPU and provide copies to the Director of the BPU's Division of Customer Assistance, the Director of the BPU's Division of Energy and the Director of Rate Counsel quarterly reports containing eight (8) customer service metrics which metrics will be measured on a monthly basis.
11. The Signatory Parties agree to the Company's implementation of a Gas Weather Normalization Clause, as set forth in Attachment C to the Stipulation.

12. The Signatory Parties agree that the Margin Adjustment Charge ("MAC") unrecovered balance along with its corresponding interest up to the date that new base rates go into effect will be amortized and recovered through the MAC mechanism over sixty (60) months (defined as the "Prior MAC Balance"). Interest on this portion of the MAC balance once new base rates go into effect will accrue at half of the authorized MAC interest rate. The Prospective MAC Balance will accrue two way interest in the same manner as the existing MAC balance. During the month that new base rates are implemented, the unrecovered MAC balances, accrued interest, revenues, expenses and amortization will be pro rated appropriately based upon the number of days in the month before and after new base rates go into effect. The new MAC rate effective with new base rates is \$0.000000/therm. Prospectively, the Company will make annual MAC filings commencing with the next BGSS filing. The MAC filing will be made commencing June 2011 with the BGSS filing with a proposed rate effective date of October 1, 2011
13. The Signatory Parties agree that twenty-year (20) weather data will be used to define normal weather for the purposes of the gas weather normalization clause.
14. The Signatory Parties agree that the Company will utilize the gas rate design set forth in Attachment E to the Stipulation. In its next distribution base rate case petition, the Company agrees to file a cost of service study using the peak and average methodology for gas distribution. The average portion will be 62.66% and the peak portion will be 37.34%. The Company and any signatory to the Stipulation will have the right to file and support any COSS method it considers appropriate. Each party reserves its right to request that adjustments be made to the Cost of Service Studies submitted in that proceeding.
15. PSE&G has withdrawn its request for approval of changes to its tariff regarding sub-metering which changes were set forth in the Company's petition. PSE&G has modified its current tariff language to reflect the BPU's current definitions of sub-metering and check-metering as reflected in BPU Docket No. AO05080734. PSE&G has withdrawn its check-metering petitions pending before the Board in Docket Numbers ET07010035 and GT07010036.
16. PSE&G has withdrawn its smart growth petition pending before the Board in Docket Number AX03120973.
17. The Signatory Parties agree that the Company's existing Late Payment Charge will be applied after thirty (30) days in lieu of the present forty-five (45) days. Residential customers are not subject to a late payment charge.
18. The Signatory Parties agree that the Company's electric reconnection charge shall be increased to \$45.00 from the current rate of \$20.00 and the Company's gas reconnection charge shall be increased to \$45.00 from the current rate of \$20.00.
19. The Signatory Parties agree that the Company's electric field collection charge shall be increased to \$30.00 from the current rate of \$16.00 for Commercial and Industrial customer classes only. The Company's gas field collection charge shall be increased to \$30.00 from the current rate of \$16.00 for Commercial and Industrial customer classes only. There shall be no electric field collection charge and no gas field collection charge for its Residential customer class.

20. The Signatory Parties agree that the proposed changes to the Company's electric and gas tariffs, B.P.U.N.J. No. 15, Electric, and B.P.U.N.J. No. 15, Gas, shall be adopted. Attachment F to the Stipulation shows the tariff language changes. The rates contained in these tariff sheets are for illustrative purposes only. The electric rate design and the gas rate design, shown in Attachment D and Attachment E, respectively, reflect the revenue requirement agreed to by the Signatory Parties. The Company will file tariffs in compliance with the terms set forth in the Stipulation.
21. The Signatory Parties hereby state their support for a filing by PSE&G requesting a separate generic Board proceeding within sixty (60) days of issuance of a written final Board Order in this proceeding to address issues on a state-wide basis, relating to a Consolidated Income Tax Adjustment. The Signatory Parties reserve all of their rights in any subsequent proceeding to take any position they deem appropriate, to make any arguments they deem appropriate and to offer any alternative proposals. The outcome of the generic proceeding will not affect the rates set forth in the Stipulation.
22. The Signatory Parties hereby recommend that the Board establish a separate, generic Board proceeding to address issues on a state-wide basis, relating to the provision of discounted gas utility distribution rates and contracts based upon a customer's ability to by-pass the utility's gas distribution system and the applicability of the Societal Benefit Charge ("SBC") to such instances of bypass potential. The Signatory Parties reserve all of their rights in any subsequent proceeding to take any position they deem appropriate, to make any arguments they deem appropriate and to offer any alternative proposals.
23. The Signatory Parties agree that the ALJ should issue an Initial Decision accepting the terms set forth in the Stipulation as well as issue a separate decision deciding the issues raised by MEG and NJLEUC, including but not limited to (1) the rate for gas transportation service charged to PSEG Power, both prospectively and for prior periods, (2) the applicability of the SBC, Regional Greenhouse Gas Initiative ("RGGI") and CAC surcharges to PSEG Power, both prospectively and for prior periods, and (3) the recalculation of Rate Schedule Non-Firm Transportation Gas Service ("TSG-NF") rates, SBC, RGGI and CAC surcharges, both prospectively and for prior periods, to include gas volumes transported for PSEG Power and taking into consideration the counter arguments briefed by any party.

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

INITIAL DECISION

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

in controversy, with the exception of the Paragraph 24 Issues raised by MEG and NJLEUC.

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

- 1) At a minimum, what needs to be considered by the Board in a generic proceeding is whether:
 - i. PSEG Power's receipt of interruptible gas transportation service pursuant to a non-tariff rate schedule is justified beyond July 31, 2002 on the basis of a Board-approved demonstrated threat of bypass of the PSE&G distribution system.
 - ii. The continued receipt of interruptible gas transportation by PSEG Power through the non-tariff reservation charge constitutes a competitive advantage to PSEG Power relative to service opportunities afforded other interruptible gas electric generation entities within PSE&G territory.
 - iii. PSEG Power's continued receipt of interruptible gas service should at the conclusion of this proceeding be switched to receipt under schedule TSG-NF. If PSEG Power can demonstrate a credible bypass threat it may exercise its right to make such application to PSE&G; PSEG Power and PSE&G may in turn petition the Board for consideration of any non-tariff special contract that may result, along with proofs supporting such contract;
- 2) Consistent with the prohibitions on unreasonable discrimination and undue preference, it has been the Board's longstanding practice to allow special rates only after a contested proceeding, in which the Board makes explicit findings as to the factual justification and legal authority granting the special rate. Any rate discount or other preferences granted to ECG or any other PSE&G customer, including any waivers of the SBC, RGGI, and CAC charges, should be considered in a contested proceeding. Preferences should be granted only if justified by explicit findings of fact, and with proper legal authority as found by the Board. ALJ Braswell recommends that the Board initiate a generic proceeding where all interested parties will have an opportunity to address rate discounts and preferential contracts.
- 3) The same standard that applies to PSE&G's other natural gas distribution customers should also apply to PSEG Power. Any preferential pricing or other terms of service provided to PSEG Power after July 31, 2010, should be considered in a contested proceeding before the Board. Any continued preference should be based on specific factual and legal findings as outlined above.
- 4) To the extent any of PSE&G's special contracts with ECG or other generators contain "evergreen" provisions that automatically extend the term of the contract in the absence of an objection by either party, the Company should be directed to seek Board approval before any such automatic extension begins ;
- 5) ALJ Braswell found that ECG's proposed EGS-NR tariff, if implemented, would have broad statewide implications that need to be further explored. ALJ Braswell further stated that as recommended by Rate Counsel in its brief, if the Board wishes to consider the changes recommended by ECG, it should do so only in a proceeding, with notice to all interested stakeholders, so that it can fully evaluate whether a special electric generation tariff such as that proposed by ECG is an

appropriate means for furthering relevant State policies.

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

Exceptions

PSE&G

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

With respect to ECG's claim that the TSG-NF tariff has been applied in a discriminatory manner and its assertion that ALJ Braswell cannot avoid a finding of discrimination in administration of the TSG-NF Rate, PSE&G argues that this is contrary to the evidence, even with regard to ECG itself.

Furthermore, PSE&G contends that the findings that the rates with respect to PSEG Power were approved by the Board is correct and is dispositive.

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

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

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

NJLEUC

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

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

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

While not taking issue with the convening of a separate generic proceeding to consider statewide policy regarding utility bypass generally and certain tax issues, NJLEUC states that the PSEG Power issues are unique and ripe for determination by the Board without the need for further proceedings. According to NJLEUC, by recommending a generic proceeding the ALJ committed error because generic proceedings are not convened in contested cases to adjudicate⁹ the rights of specific parties or to address past conduct. (*Id.* at 12). NJLEUC notes that by rejecting the Initial Decision's recommended use of a generic proceeding to address PSEG Power issues, the Board would have two procedural options: (1) remanding the matter to ALJ Braswell to provide the separate decision contemplated by Paragraph 24 of the Stipulation, or (2) deciding the PSEG Power issues now, based on the extensive evidentiary record developed in the OAL. (*Id.* at 15).

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

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

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

APPENDIX
Item 12



Agenda Date: 9/16/10
Agenda Item: 2G

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF SOUTH)	DECISION AND ORDER
JERSEY GAS COMPANY FOR APPROVAL OF)	APPROVING STIPULATION
INCREASED BASE TARIFF RATES AND CHARGES)	AND ADOPTING INITIAL
FOR GAS SERVICE AND OTHER TARIFF REVISIONS)	DECISION
)	DOCKET NO. GR10010035

Ira G. Megdal, Esq., Stacy A. Mitchell, Esq., Daniel J. Bitonti, Esq., Cozen O'Connor, Counsel
for Petitioner South Jersey Gas Company

Felicia Thomas-Friel, Esq., Deputy Rate Counsel, Judith Appel, Esq., Assistant Deputy Rate
Counsel, Kurt Lewandowski, Esq., Assistant Deputy Rate Counsel, Division of Rate Counsel
(Stefanie A. Brand, Esq., Director)

Alex Moreau, Deputy Attorney General and Cynthia Holland, Deputy Attorney General, for the
Staff of the New Jersey Board of Public Utilities (Paula T. Dow, Attorney General of New Jersey)

BY THE BOARD:

BACKGROUND

Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and N.J.A.C. 14:1-5.12, on January 15, 2010, South Jersey Gas Company ("SJG" or "Company") filed a petition (the "Petition") with the New Jersey Board of Public Utilities ("BPU" or "Board") to increase its base tariff rates and charges for gas service, and implement certain other tariff revisions. The Company states that its request for a rate increase is necessitated by a combination of factors including ongoing increasing capital expenditures for infrastructure improvements to ensure system reliability, as

well as increased pension, healthcare and other expenses. SJG is seeking an increase in operating revenues of approximately \$64 million, inclusive of Sales and Use Tax ("SUT") or approximately \$35.9 million or 7.15% after the elimination of the SUT, and the roll-in to base rates of approximately \$7.4 million from Capital Investment Recovery Tracker ("CIRT") revenues and \$16.3 million from Conservation Incentive Program ("CIP") revenues. The Company is further proposing to implement a Reliability Tracker which it states will enable the Company and regulators to expeditiously review and provide appropriate incentives for significant investments that SJG must make in the immediate future to replace infrastructure, including certain defective riser valves, and comply with federal pipeline safety and integrity management regulations.

The January 15, 2010 filing proposed a test year based on the twelve months ending June 30, 2010, and comprised of three months of actual and nine months of estimated data. On July 30, 2010, the Company filed its update consisting of twelve months of actual data and reflecting a revenue increase of approximately \$41.9 million, exclusive of SUT.

On April 28, 2009 in Docket No. GO09010051, the Board on issued an Order approving the implementation of South Jersey's CIRT. That Order included a list of projects which are "Qualifying Projects" for inclusion in the CIRT. The Company proposed to roll certain of those projects out of the CIRT and into rate base in this case.

In Docket No. GR09110907, by a petition filed on November 6, 2009, the Company requested authorization to increase its CIRT program by approximately \$10 million, reflecting certain projects that had not previously been determined to be Qualifying Projects. SJG proposed to move certain projects included in the \$10 million into rate base as part of this Petition.

The Petition was transmitted to the Office of Administrative Law ("OAL") as a contested case on January 27, 2010, and was assigned to Administrative Law Judge ("ALJ") Gail M. Cookson. On March 17, 2010, Judge Cookson issued a prehearing Order establishing procedures and hearing dates for the conduct of this case.

The Company, BPU Staff ("Staff"), the New Jersey Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties") are the only parties to this case. On March 24, 2010, Public Service Electric and Gas ("PSE&G") filed a motion to intervene and was granted participant status on the issues of consolidated taxes, incentive compensation, and pensions by Order of Participation dated April 15, 2010.

Following notices in newspapers of general circulation within SJG's territory, and the serving of notice upon affected municipalities and counties within the Company's service area, two public hearings were held in Voorhees, New Jersey on April 13, 2010. No members of the public appeared to comment on the Petition.

On May 28, 2010, Rate Counsel filed its Direct Testimony responding to the Petition.

Evidentiary hearings were scheduled for August and September 2010. However, following the exchange of numerous discovery requests and responses between the Parties, the filing of testimony by Rate Counsel, and numerous meetings to discuss settlement, the Parties agreed upon a Stipulation of Settlement ("Stipulation"), the salient elements of which are described below.

THE PROPOSED STIPULATION¹

The Company will be permitted to increase its base rates in a manner designed to produce a total revenue requirement increase of \$45 million inclusive of SUT and revenues previously recovered through the CIP and CIRT (or approximately \$18,655,038, exclusive of SUT) and after the roll-in to base rates of approximately \$6,788,000 of revenues (exclusive of SUT) previously recovered through the CIRT and \$16,613,036 of revenues (exclusive of SUT) previously recovered through the CIP. The rate base utilized to derive this amount includes certain CIRT projects which the Company had proposed to roll into rate base in this case. As a result of the Stipulation, after giving effect to the partial roll-in of the CIRT and the roll-in of the CIP, typical residential sales service customers, using 100 therms of gas during a winter month, will receive an increase of \$5.79 or 4.1% on their monthly bills from \$142.56 to \$148.34;

2. The new distribution rates reflect a rate of return on common equity of 10.3% and an overall rate of return of 8.21% with a 51.2% common equity component. The percentage of total debt in the capital structure (i.e., short-term debt plus long-term debt) shall be 48.8%;
3. The Board's Order of April 28, 2009, Docket No. GO09010051 approving the implementation of South Jersey's CIRT included a list of projects which are Qualifying Projects for inclusion in the CIRT.
4. The Qualifying Projects listed in Schedule B will remain in the CIRT pending review in a Phase II proceeding;
5. At the request of the Company, on or about July 1, 2011 or a different agreeable date, a Phase II proceeding will commence to complete a review of all Qualifying Projects not being rolled into rate base at this time. To the extent that it is determined by the Board that the projects reviewed in Phase II are Qualifying Projects, prudent in nature, and the costs thereof are likewise prudent, the Company shall be permitted to increase base rates to recover a return of and return on its investment. As a result of the Order issued in the Phase II proceeding, the CIRT rate and tariff will terminate;
6. Of the \$10 million increase in CIRT program costs requested by the Company in Docket No. GR09110907, \$4,199,653 has been included in rate base in this case and the affected projects are listed in Schedule C. The remaining projects are reflected in Schedule D and will be addressed in Docket No. GR09110907;
7. The Margin Revenue Factors and the monthly Baseline Usage per Customer ("BUC") set forth in SJG's current CIP tariff are to be updated to align these aspects of the CIP with the new rates set in this proceeding. The new Margin Revenue Factors and BUC are listed in paragraph 6 of the Stipulation. The rate increase reflects the amortization of the following costs over a period that does not exceed thirty-six (36) months: deferred expenses for the rate case, the Liberty Energy Competition & Management Audit, gas supply hedging program audit, deferred pipeline integrity management costs and the

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

Rockford Eclipse Valves;

8. The rates established in this Stipulation include the amortization of an \$184,500 call premium on the retirement of the Company's 8.6% Unsecured Debenture Note retired in February 2005. This premium will be amortized over the life of the replacement long term debt (6.213% First mortgage Bond Series, due 2034);
9. The rates set in this Stipulation provide for continued deferred accounting treatment for unrealized gains and losses resulting from mark-to-market accounting requirements on the two (2) interest rate swaps on the Company's books at June 30, 2010. Realized gains or losses resulting from an early termination of the swaps will be deferred until SJG's next base rate case;
10. The Company withdraws its request for a reliability tracker and the components of the reliability tracker;
11. SJG's current composite depreciation rate will remain unchanged at 2.24%. This rate is prior to the return to customers of "Non-Legal Asset Retirement Obligations" of \$48,665,855 at \$1,216,646 per year over a forty (40) year period, which SJG will recognize as a regulatory liability, and record to account number 254, Other Regulatory Liability. This will make the Company whole for actual future costs of removal. In accordance with the provisions of the Stipulation in Docket No. GR03080683, SJG will continue to record an annual net negative salvage allowance of \$1,416,816. This amount, along with ongoing net salvage amounts incurred, shall be charged to Account No. 254 as a regulatory liability;
12. The revenue increase in this matter reflects an adjustment in rate base due to the filing by SJG of a consolidated federal income tax return;
13. The Company has commenced litigation against certain parties relative to Rockford Eclipse Valves. The net proceeds of this litigation, if any, shall be deferred by SJG and returned to customers in the Company's next base rate case;
14. Concerning federally mandated transmission and distribution Pipeline Integrity Management programs, starting October 1, 2010, the Company may defer all costs incurred in connection with such programs on its books, and may recover all such prudently incurred costs and related carrying costs in its next base rate case proceeding, subject to review by the Board. Carrying charges will be booked at the Company's SBC interest rate. SJG withdraws its petition in Docket No. GO05100879;
15. The Company's proposal regarding Special Provision (9) of Rider A to reduce the Monthly Threshold from 5,000 to 3,000 therms of annualized usage, applicable to all non-residential customers will be addressed in SJG's 2010-2011 BGSS proceeding, Docket No. GR10060378;
16. The Parties stipulate and agree that the revenue allocation and rate design shown in Schedule E are appropriate;
17. The Parties stipulate and agree that the issue set forth in the stipulation entered into by the parties in January 2010 in Docket No. GR05121019 regarding BGSS savings

offsetting any recovery of non-weather related margins through the CIP Tariffs will be addressed in SJG's 2010-2011 CIP proceeding.

18. Concurrent with the implementation of new base rates in this proceeding, the CIRT rate will be reduced to \$0.0044 per therm, including taxes, which reflects the roll-in of the CIRT projects identified in Schedule A attached hereto.
19. SJG will add Rate Schedule Natural Gas Vehicle (NGV) to its tariff. Rate Schedule NGV will contain a distribution charge of \$0.1047 per therm (excluding SUT), a graduated customer charge based on customer usage (as applicable), and a compression charge of \$0.53 per therm (excluding SUT) as applicable. Rate Schedule NGV will be subject to a full review in the Company's next base rate case. Provided, however, that neither the principle of gradualism nor any other similar principle shall be employed by any party to oppose adjusting the NGV rate to recover its full cost of service in the next SJG base rate case.

SJG agrees to provide, in the interim, an annual report to the Parties regarding rate NGV. The annual report will commence once SJG has added a customer to this rate schedule. The report will include the number of customers, projected annual usage per customer and actual usage per customer.

20. Starting after the first quarter of 2011, the Company shall file with the Secretary of the Board and provide copies to the Director of the Board's Division of Customer Assistance, the Director of the Board's Division of Energy and the Director of Rate Counsel, quarterly reports containing the eight (8) customer service metrics reflected on Schedule G, which metrics will be measured on a monthly basis.
21. Prior to issuance of the quarterly report, the Parties will meet to discuss the contents of the report. The quarterly reporting will begin after the first quarter of 2011, and will include data for the last quarter of 2010 and first quarter of 2011. The quarterly report will be filed within thirty days after the end of each quarter. The Parties are not precluded from later agreeing to discontinue quarterly reporting in lieu of annual reporting. The Parties further agree to meet no later than March 31, 2011 to assess the progress of the Company in meeting the above-mentioned benchmarks.
22. The Parties agree that the benchmarks set forth in Schedule G are guidelines that the Company will strive to achieve by December 2011. If the Company does not meet these benchmarks, neither Staff nor Rate Counsel shall request that the Board penalize or fine the Company for its failure to meet these benchmarks.
23. Attached hereto as Schedule F are tariffs reflecting a number of changes agreed upon by the Parties. The Reconnection, Return Check, and Field Collection charges are unchanged. The Parties agree to recommend that the Board approve these tariffs by its Order approving the Stipulation.

As reflected on Schedule E attached to the Stipulation, the revenue increase will be allocated to achieve the following class distribution revenue increases: 12% to the RSG class, 11.2% to the GSG rate class, 5% to each of the GSG-LV, CTS, LVS, and EGS-LV classes, 5.6% to the ESG class and 16.8% to the GLS class.

The impact of the instant rate changes on the monthly gas bill for a typical residential heating customer using 100 therms per month will be an increase of \$5.38 or 3.8%, and a decrease by \$0.36 or 0.8% for a residential non-heating customer using 25 therms per month.

On September 14, 2010, Administrative Law Judge ("ALJ") Gail M. Cookson issued her Initial Decision in the proceeding. ALJ Cookson found that the Signatory Parties voluntarily agreed to a settlement in this matter, and that the Stipulation fully disposes of all issues in controversy and is consistent with the law.

FINDINGS AND RECOMMENDATIONS

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

The Board notes that the Stipulation provides for an increase of \$45 million inclusive of SUT and revenues previously recovered through the CIP and CIRT (or approximately \$18,655,038, exclusive of SUT) and after the roll-in to base rates of approximately \$6,788,000 of revenues (exclusive of SUT) previously recovered through the CIRT and \$16,613,036 of revenues (exclusive of SUT) previously recovered through the CIP as compared to the \$64 million sought by the Company in the Petition. The Board FINDS that the stipulated rate increase based on a rate base of \$821,889,948 is reasonable.

The Board also FINDS that the appropriate return on equity for SJG is 10.3 percent with a 51.2 percent common equity component and an overall rate of return of 8.21 percent. The 10.3 percent return is consistent with other recent Board decisions, and fairly balances the interests of ratepayers and shareholders. In addition, the Board notes that this return and capital structure supports solid investment grade credit ratings to ensure that the Company will be able to provide safe, adequate and proper service in a financially efficient manner.

The Board HEREBY NOTES SJG's withdrawal of its request for a reliability tracker and the components of the reliability tracker, finding these withdrawals to be in the public interest and thus, reasonable and prudent.

The monthly gas bill for a typical residential heating customer using 100 therms per month will increase by \$5.38 or 3.8% and decrease by \$0.36 or 0.8% for a residential non-heating customer using 25 therms per month.

The Board HEREBY APPROVES the use of a rate base adjustment to recognize the filing by

SJG of a consolidated federal income tax return.

The Board HEREBY APPROVES the roll into base rates of \$4,199,653 of CIRT related program costs. The CIRT will be correspondingly reduced.

The Board HEREBY APPROVES the Margin Revenue Factors and monthly Baseline Usage per Customer reflected in the Stipulation.

The Board HEREBY APPROVES the amortization of an \$184,500 call premium on the retirement of SJG's 8.6% Unsecured Debenture Note retired in February 2005; with the premium to be amortized over the life of the replacement long term debt (6.213% First Mortgage Bond Series, due 2034).

The Board HEREBY APPROVES deferred accounting treatment for 1) unrealized gains and losses resulting from mark-to-market accounting requirements on the two (2) interest rate swaps reflected on SJG's books at June 30, 2010; 2) the Rockford Eclipse Valve litigation net proceeds, if any; and 3) PIM programs, starting October 1, 2010. The PIM costs will accrue carrying costs at SJG's SBC interest rate. The realized gains or losses resulting from early termination of the swaps will be deferred until SJG's next base rate case

The Board HEREBY APPROVES a tariff applicable to Natural Gas Vehicles that will contain a distribution charge of \$0.1047 per therm (excluding SUT), a graduated customer charge based on customer usage (as applicable), and a compression charge of \$0.53 per therm (excluding SUT) as applicable and HEREBY DIRECTS that Rate Schedule NGV will be subject to a full review in the Company's next base rate case.

The Board HEREBY DIRECTS that the issue of BGSS savings offsetting any recovery of non-weather related margins through the CIP Tariffs that stems from the Board's January 2010 Order in Docket No. GR05121019 will be addressed in the 2010-2011 CIP proceeding, and SJG's proposed adjustment to the Monthly Threshold from 5,000 to 3,000 therms of annualized usage will be addressed in SJG's 2010-2011 BGSS proceeding.

The Board HEREBY APPROVES the benchmarks reflected on Schedule G, and HEREBY DIRECTS that 1) quarterly reports containing the eight (8) customer service metrics reflected on Schedule G, which are to be measured on a monthly basis, be filed according to the instructions in the Stipulation, and that the Parties will meet to discuss the contents of the report prior to the report being filed and will meet prior to April 1, 2011 to assess SJG's progress in meeting the agreed upon benchmarks.

Lastly the Board HEREBY APPROVES the revenue allocation and rate design reflected on Schedule E attached to the Stipulation;

The Board FURTHER DIRECTS that the issue of the review of the rate treatment of the costs of all of the Company's CIRT Qualifying Projects be addressed in a Phase II proceeding to be initiated at the request of the Company on or about July 1, 2011 or a different agreeable date.

Lastly, the Board HEREBY DIRECTS that the new rates resulting from this Stipulation are to become effective for service rendered on and after the date of this Order.

The Board HEREBY FINDS that the tariff sheets attached to the Stipulation comply with the terms of the Stipulation, and HEREBY APPROVES the attached tariff sheets. The Board HEREBY DIRECTS the Company to file within the next five (5) business days a compliance tariff that is consistent with the terms of this Order and effective on the date of this Board Order.

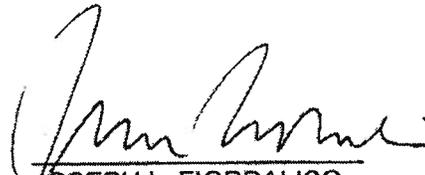
The Company's costs will remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

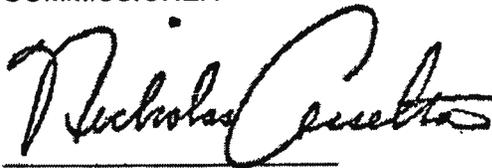
DATED: 9/17/10
September 17, 2010

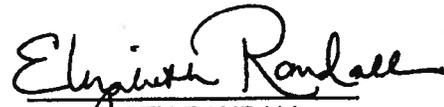
BOARD OF PUBLIC UTILITIES
BY:

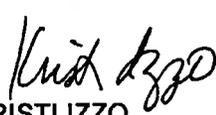

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PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

