

**BEFORE THE STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
BEFORE THE HONORABLE JOSEPH L. FIORDALISO, COMMISSIONER**

**IN THE MATTER OF A GENERIC :  
STAKEHOLDER PROCEEDING :  
TO CONSIDER PROSPECTIVE : BPU Docket Nos.  
STANDARDS FOR GAS DISTRIBUTION : GR10100761 & ER10100762  
UTILITY RATE DISCOUNTS AND :  
ASSOCIATED CONTRACT TERMS :  
AND CONDITIONS :**

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**APPENDIX TO INITIAL BRIEF OF THE  
NEW JERSEY DIVISION OF RATE COUNSEL**

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**STEFANIE A. BRAND, DIRECTOR  
DIVISION OF RATE COUNSEL**  
31 Clinton Street, 11th Floor  
P. O. Box 46005  
Newark, New Jersey 07101  
(973) 648-2690 - Phone  
(973) 624-1047 - Fax  
<http://www.state.nj.us/rpa>  
[njratepayer@rpa.state.nj.us](mailto:njratepayer@rpa.state.nj.us)

**FILED: JANUARY 28, 2011**

**On the Brief:**

Judith B. Appel, Assistant Deputy Public Advocate  
Sarah H. Steindel, Assistant Deputy Public Advocate

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3. I/M/O the Petition of Public Service Electric and Gas Co. for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, BPU Dkt. No. GR09050422, Decision and Order Adopting Stipulation of Settlement (Supplemental Proceeding) (Dec. 12, 2010)
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\* Attachments are omitted from the unpublished BPU Orders contained in this appendix.

**APPENDIX**  
**Item 1**



Agenda Date: 1/28/09  
Agenda Item: 2C

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

ENERGY

IN THE MATTER OF THE FILING OF A SPECIAL )  
CONTRACT BY PIVOTAL UTILITY HOLDINGS, INC. )  
d/b/a ELIZABETHTOWN GAS

DECISION AND ORDER  
DOCKET NO. EO0809(829)

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

On September 29, 2008, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Petitioner," "Elizabethtown," or "Company") filed a request, pursuant to *N.J.A.C. 14:3-1.3(e)* and *(f)*, with the New Jersey Board of Public Utilities ("Board"), seeking approval of a "Peaking Gas and Gas Transportation Service Agreement" between Elizabethtown and Merck & Co., Inc. ("Merck") (hereinafter "Special Contract"), to avoid a bypass of the distribution system by Merck. The Petition also requested confidential treatment of certain commercially sensitive portions of both the proposed Special Contract and the supporting affidavits of Gary S. Marmo and Leonard J. Willey in accordance with *N.J.A.C. 14:1-12.1 et seq.* Support for the confidentiality agreement was provided in affidavits filed by David L. Brooks, on behalf of Merck, and Gary S. Marmo, on behalf of Elizabethtown.

Under the proposed Special Contract, Elizabethtown will provide natural gas transportation service at negotiated rates to Merck's pharmaceutical research and production plant (the "Plant") in Linden/Rahway, New Jersey. Under the proposed Special Contract, Elizabethtown will also purchase peaking service from Merck. For that reason, the Petition also contained a request for a determination that Merck's sales of gas under this Special Contract will not cause Merck to become, be, or be deemed to be, a "public utility" under *N.J.S.A. 48:2-13*.

**BACKGROUND**

Currently, Elizabethtown provides service to the Plant under its Interruptible Transportation Service/Large Volume Demand ("ITS/LVD") Service Classification. Elizabethtown indicates that the Plant is one of the Company's largest customers.

Elizabethtown states that in the fall of 2006, Merck approached Elizabethtown about the possibility of obtaining a special contract for gas service to the Plant. Merck explained that it was seeking to reduce its energy costs at the plant due to increasing global competition from other entities engaged in pharmaceutical research and manufacturing. Merck further explained that it was contemplating a complete bypass of Elizabethtown's distribution system through an interconnection of its facilities with one of two nearby interstate natural gas pipelines,

Transcontinental Gas Pipe Line Corporation or Texas Eastern Transmission System, LLC. Petitioner entered into negotiations with Merck for a Special Contract.

During the course of negotiations, Merck filed a complaint with the Board seeking a refund and reduction of claimed overcharges for an increase in the Distribution Charge for ITS/LVD service. This complaint is currently pending before the Office of Administrative Law under a separate docket.<sup>1</sup> Elizabethtown states that after protracted and difficult negotiations, the Company entered into the proposed Special Contract with Merck. Issues associated with the complaint are resolved by this Special Contract.

Petitioner notes that under the Special Contract, Merck will continue to be an ITS/LVD customer, with the exception of different rates and certain terms and conditions of service. Significant provisions of the Special Contract include: (1) a term of twenty years, subject to certain early termination rights; (2) the provision by Elizabethtown of transportation service to Merck under the ITS/LVD Service Classification at charges that will permit Elizabethtown to continue to serve Merck at rates that exceed the marginal cost of providing such service; (3) payment by Merck of the full volumetric SBC rate; and (4) the purchase by Elizabethtown of incremental peaking supplies during each winter season in which the contract remains in effect at a price that is reasonable and consistent with market conditions.

### PROCEDURAL HISTORY

Representatives of the Company, Merck, Board's Staff, and the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") (hereinafter collectively "the Parties") met to review the proposed Special Contract. Comments were submitted by Rate Counsel on January 19, 2009. Staff recommends approval of the Contract. Rate Counsel filed a letter with the Board concerning the Special Contract stating that while it did not object to the Special Contract, it did believe that the Board should order customers such as Merck to pay any additional costs imposed by the Board on ratepayers in the future.

### DISCUSSION AND FINDINGS

As an initial matter, the Board finds that the proposed relationship will not, in and of itself, cause Merck to become a public utility as the term is used by the Board.

The definition of a public utility is controlled by N.J.S.A. 48:2-13. The statute states, in pertinent part:

The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any ... pipeline ... system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.

[N.J.S.A. 48:2-13(a).]

<sup>1</sup> I/M/O Merck & Company Inc. vs. Elizabethtown Gas Company –Verified Complaint and Motion for Declaratory Ruling dated January 10, 2008 BPU Docket No. EO08010018.

The test of whether an operation should be classified as a public utility has two distinct elements: (1) for public use; and (2) under privileges granted by the State. Both elements must be satisfied before an entity will be classified, and thus regulated, as a public utility.

The privileges granted by the State element of the test do not simply include the issuance of a franchise. *Lewandoski v. Brookwood Musconetcong River Ass'n*, 37 N.J. 433, 447, (1962). Instead, these privileges can include a broad and encompassing listing of benefits, such as the privilege to carry on business in the State under the New Jersey Incorporation Act. *Ibid.* The "privileges granted by the State" element of the test is here clearly satisfied. Merck is incorporated in the State of New Jersey, and thus enjoy benefits flowing from the State. As such, the proposed Special Contract fits under the "privileges granted by the State" element of the Statute.

The second element of the test involves the question of public use. Whether a system is operated "for public use" depends on the character and nature of the use, and not on any particular structure of the operation. *Lewandoski v. Brookwood Musconetcong River Ass'n*, 37 N.J. 433, 445-46, (1962). Previous systems found to be engaged in public use have involved the distribution of fuel oil to residents of a housing complex, *I/M/O Petition of New Jersey Natural Gas Company to Have Rele, Inc. And/Or Redi-Flo Corporation of New Jersey, Adjudges A Public Utility*, 109 N.J. Super. 324 (App. Div. 1970), and a water distribution system designed to serve all purchasers of a development open to the public, *Lewandoski, supra*, 37 N.J. at 433. Unlike those situations, the Special Contract proposal is not setting up a system where the public will or can be served; instead it is limited to a single, non-public customer. As such, the proposed Special Contract fails to satisfy this second element of the test and therefore is not, as currently described, a public utility under the Board's N.J.S.A. 48:2013 jurisdiction.

Accordingly, the Board HEREBY FINDS that Merck shall not be classified as a public utility or subject to N.J.S.A. 48:2-13 jurisdiction, based upon the proposed Special Contract set forth in this petition. The Board FURTHER FINDS that nothing in this decision relieves Petitioners from jurisdiction of the Board in terms of the ownership, management or operation of pipelines or generation facilities; the only determination made herein is that the Board will not exert public utility regulation over the entities based upon the proposed project set forth by the Special Contract. Finally, the Board FURTHER FINDS that this determination applies only to these Petitioners and this Special Contract, and that any modification of the Special Contract shall constitute a change of circumstances such that the findings of this Order may be rendered null and void.

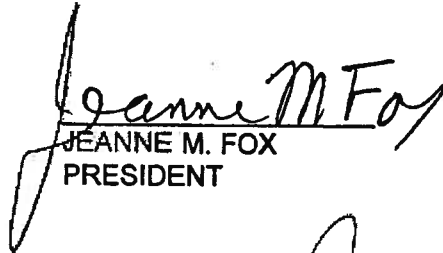
Furthermore, the Board HEREBY FINDS that the Special Contract appears to be just and reasonable, in the public interest, and in accordance with law. The Special Contract will enable Elizabethtown to avoid a bypass by Merck while preserving substantial benefits for Elizabethtown's other customers from continued contributions to distribution costs and from a valuable and necessary peaking service provided to Elizabethtown at fair and reasonable costs. Furthermore, the Special Contract will not have a negative impact upon rates paid by ratepayers in general and will have a positive benefit by requiring Merck to pay the Societal Benefits Charge.

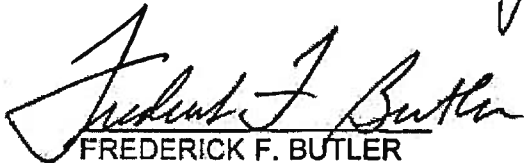
On the basis of these findings, the Board HEREBY APPROVES the "Peaking Gas and Gas Transportation Service Agreement" between Elizabethtown and Merck & Co., Inc., predicated upon Merck withdrawing both its complaint against Elizabethtown and its Motion for Declaratory Ruling and HEREBY ORDERS the implementation of Elizabethtown's Special Contract with

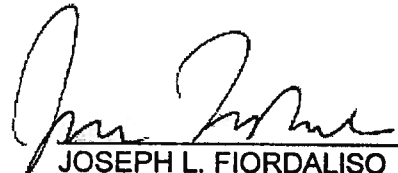
Merck effective on the date of this Order. As to the request for confidentiality on the portions of the Special Contract, the Board will follow its guidelines for confidentiality as set forth in N.J.A.C. 14:1-12.1 et seq., including the provision that confidentiality determinations shall be made following a request as set forth in N.J.A.C. 14:1-12.6(a), and therefore makes no determination of confidentiality at this time.


DATED: 1/28/09

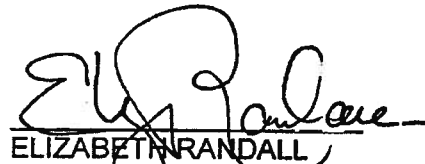
BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

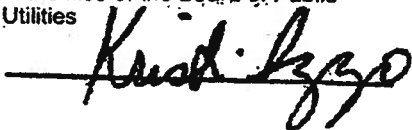
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:  
  
KRISTI IZZO  
SECRETARY

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





In the Matter of the Filing of a Special Contract by Pivotal  
Utility Holdings, Inc. d/b/a Elizabethtown Gas

Docket No. EO08090829

Service List

Mary Patricia Keefe  
Pivotal Utility Holdings Inc.  
d,/b/a Elizabethtown Gas  
300 Connel Drive, Suite 300  
Berkeley Heights, NJ 07922

Kenneth T. Maloney  
Cullen and Dykman LLP  
1101 Fourteenth St., N.W.  
Suite 550  
Washington, DC 20005

Alice Bator, Chief  
Division of Energy  
NJ Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Naji Ugoji  
Division of Energy  
NJ Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Alex Moreau, Esq.  
Kenneth Sheehan, Esq.  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street  
Newark, NJ 07102

Suzanne Patnaude, Esq.  
Legal Specialist  
NJ Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Judith Appel, Esq.  
Division of Rate Counsel  
31 Clinton Street -11th Floor  
P.O. Box 46005  
Newark, NJ 07101

Felicia Thomas-Friel, Esq.  
Division of Rate Counsel  
31 Clinton Street -11th Floor  
P.O. Box 46005  
Newark, NJ 07101

David Brooks  
Merck & Co., Inc.  
Two Merck Drive  
PO Box 200, WS3W – 16B  
Whitehouse Station, NJ 08889-0200

Martin C. Rothfelder  
Rothfelder Stern, LLC  
Law Offices  
625 Central Ave.  
Westfield,, NJ 07090

**APPENDIX**  
**Item 2**



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

**ENERGY**

IN THE MATTER OF ELIZABETHTOWN GAS )  
COMPANY FOR APPROVAL OF AN AMENDMENT )  
TO A CONTRACT WITH ROCHE VITAMINS, INC., )  
AND A PROTECTIVE ORDER AND EXEMPTION )  
FROM PUBLIC DISCLOSURE OF PORTIONS OF )  
THE AFOREMENTIONED SPECIAL CONTRACT )  
AS AMENDED )

**DECISION AND ORDER**

**DOCKET NO. GM99020094**

(Service List Attached)

BY THE BOARD:

On February 5, 1999, pursuant to N.J.A.C. 14:3-9.6, Elizabethtown Gas Company ("Elizabethtown", "Company", "Petitioner"), a division of NUI Corporation, filed with the New Jersey Board of Public Utilities ("Board") for approval of a second amendment to an existing special contract for gas transportation service ("Agreement") with Roche Vitamins, Inc. ("Roche" or "Customer") and for confidential treatment of portions contained in the amended Agreement.

By Board Order dated November 7, 1997, Docket No. GM97040216<sup>1</sup>, the Board approved the existing twenty-one year term Agreement as initially amended, and provided a limited one year term unless otherwise extended by the Board for confidential treatment of specific pricing information contained therein. Under this Agreement, Elizabethtown presently transports Roche's gas service requirements for its cogeneration facility located in Belvidere, New Jersey, through a dedicated pipeline whose construction was approved by Board Order dated November 7, 1997, Docket No. GE97080609<sup>2</sup>. The pipeline is not integrated into the remainder

<sup>1</sup> Decision and Order, In the Matter of the Petition of Elizabethtown Gas Company for Approval of a Special Contract with Roche Vitamins, Inc. and a Protective Order and Exemption from Public Disclosure of Confidential Information, Docket No. GM97040216.

<sup>2</sup> Decision and Order, In the Matter of the Petition of Elizabethtown Gas Company, A Division of NUI Corporation, for Authorization and Approval of the Installation of Pipelines, Docket No. GE97080609.

of Elizabethtown's distribution system. The intent of the Agreement was to avoid a potential bypass and the associated loss of revenue contributions toward fixed utility costs. The pricing structure is based upon the Cogeneration Service Firm ("CSF") and Interruptible Transportation Service ("ITS-IPF") rate schedules and includes a demand charge and an operations and maintenance charge designed to recover the then current estimated costs of the pipeline construction and equipment.

Subsequent to the construction of the pipeline, Elizabethtown and Roche acknowledged that the actual pipeline construction costs exceeded the estimated costs, and that the demand charges approved under the existing agreement as initially amended would not recover the total project costs associated with the dedicated pipeline construction. This proposed second amendment, therefore, includes a revised demand charge that allows Elizabethtown to recover those additional fixed costs.

Additionally, the Company and Customer entered into a separate application and agreement, whereby, Elizabethtown could provide gas sales service to Roche under the Company's Cogeneration Service - Interruptible ("CSI") tariff to the qualified portion of Roche's operations ("CSI Agreement"). CSI is an interruptible sales service available to qualified facilities ("QFs") certified by the Federal Energy Regulatory Commission ("FERC"). Under the CSI Agreement with Roche, Elizabethtown has the opportunity to make sales to Roche that it could not otherwise make. Under the CSI Agreement, all terms and conditions of the tariffed CSI service classification will apply with the exception of the designated fuel retention.<sup>3</sup> Since the service provided pursuant to the CSI Agreement will use the same dedicated pipeline constructed to transport natural gas under the Agreement, the Company proposes that the retention factor of .25% that applies under the Agreement also apply under the CSI Agreement. Therefore, Elizabethtown would use the .25% transportation fuel shrinkage rate rather than the 1.5% transportation fuel shrinkage rate set forth in the tariffed CSI rate schedule, for the QF. The existing CSI tariff includes an 80/20 sharing of margins, whereby, 80% of CSI margins flow to ratepayers, as a credit to the cost of gas through the Company's Basic Gas Supply Service ("BGSS"), and 20% is retained by the Company. The proposed second amendment includes the addition of the CSI Service, as described above. The CSI Agreement may result in additional revenues to which the same sharing mechanism will apply.

The Division of the Ratepayer Advocate ("Ratepayer Advocate", "RPA"), Elizabethtown and Board Staff ("Staff") are the parties to this matter and participated in extensive formal and informal discovery.

By letter dated March 20, 2000, Elizabethtown asserted that its proposed revision of the initial demand charge does not alter the terms and conditions of the November 7, 1997 Order or Paragraph A of the Stipulation attached thereto. Specifically, Paragraph A of the Stipulation includes, among other things, the treatment of revenues derived under the Agreement and the requirement that Elizabethtown bear all risk associated with insufficient revenue contributions from Roche to recover the capital costs of the facilities. The revised demand charges under the proposed second amendment should reduce the expected revenue shortfall of the pipeline cost recovery, while upholding the Agreement's existing terms and conditions that ratepayers are not negatively impacted from the provision of service to Roche. Current distribution rates established on November 22, 2002, reflect the actual cost of the 14-mile pipeline in rate base and the level of revenues expected under the Agreement as amended under this petition.

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<sup>3</sup> The fuel retention often referred to as fuel loss or shrinkage factor accounts for the difference between the quantity of gas measured at the Company's interconnection with the interstate pipelines (city gates), and the quantity of gas measured by the Company's meters at its customers' premises.

## Request For Confidential Treatment

In Petitioner's filing, it requested a protective order and exemption from public disclosure of certain portions of the Agreement as amended. In the November 7, 1997 Decision and Order, under Docket No. GM97040216, the Board had granted the Company's request for confidential treatment of the Agreement for a period of one year. The one-year period has expired and the Company herein requests that the Agreement, as amended, be afforded confidential treatment.

After several rounds of discovery and conferences, on August 25, 2003, the Company, the RPA, and Staff executed the attached Stipulation. The Stipulation provides the following:

- A. The parties agree that the Board should approve Elizabethtown's Second Amendment with Roche in accordance with its terms.
- B. The parties agree that the approvals herein should be subject to the following conditions:
  1. Approval of this Stipulation shall not be regarded as establishing any precedent in any future proceedings involving approval of special contracts between Elizabethtown and its customers. The parties agree that the Stipulation recognizes the unique circumstances surrounding service to Roche.
  2. The parties to this proceeding readopt and reaffirm the terms and conditions set forth in the November 7, 1997 Decision and Order. Specifically, but not by way of limitation, the parties agree and acknowledge that nothing in the instant proceeding or in the Stipulation in any manner modifies, amends, or otherwise alters: (a) the terms and conditions of the Decision and Order or Paragraph A of the Stipulation attached thereto and incorporated therein, including, but not limited to the conditions that (i) under no circumstances will the Agreement, as amended, create any net revenue requirement for other ratepayers of Elizabethtown unless the parties agree that a benefit inures to other ratepayers, and (ii) Elizabethtown will bear all risks of any revenue shortfalls between the revenues realized under the Agreement, as amended, and the total costs relating to the capital investment, construction and operation of the fourteen-mile pipeline and associated equipment serving the Roche facility; or (b) the rights of the parties under the Decision and Order or Paragraph A of the Stipulation.
  3. The Company agrees to withdraw its request for a protective order and exemption from public disclosure as set forth in its February 4, 1999 letter petition to the Board.

## Discussion and Findings

The proposed Second Amendment will revise Roche's demand charges under the

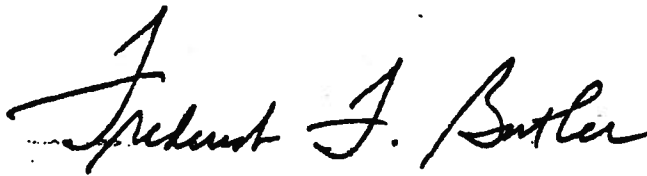
Agreement, minimizing any revenue shortfall of the pipeline cost recovery and uphold the ratepayer protections included in the Board's November 7, 1997 Order.<sup>4</sup> Additionally, the Second Amendment will allow Elizabethtown to provide interruptible sales service under the CSI service classification to Roche's qualifying facility at a fuel shrinkage rate of .25%. Based upon its review of the Petition, the subsequent Stipulation, and the documents submitted in this matter, the Board HEREBY FINDS that the August 25, 2003 Stipulation is reasonable and in the public interest, in that ratepayers will not be at risk of any revenue shortfalls between the revenues under the Agreement and the costs relating to the capital investment, construction and operations of the fourteen-mile pipeline and associated equipment serving the Roche facility. Moreover, if Roche opts for the CSI service, ratepayers will be credited with 80 percent of the margins through its BGSS Clause. Therefore, the Board HEREBY APPROVES the Stipulation, Agreement as modified under the Second Amendment and the new CSI Agreement which incorporates at a .25% shrinkage rate. In approving this matter, the Board emphasizes that this Order is intended to address the Petition in this Docket and has no precedential value in any pending or future proceeding.

DATED: 9/11/03

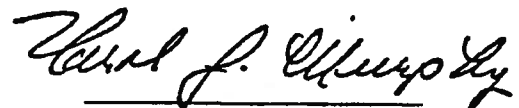
BOARD OF PUBLIC UTILITIES  
BY:



JEANNE M. FOX  
PRESIDENT



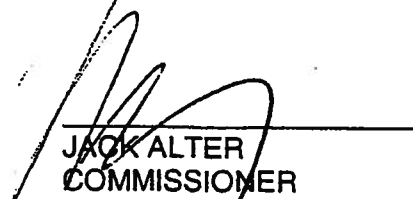
FREDERICK F. BUTLER  
COMMISSIONER



CAROL J. MURPHY  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER



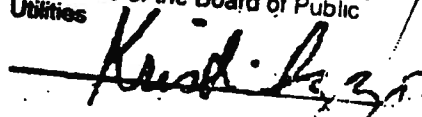
JACK ALTER  
COMMISSIONER

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



<sup>4</sup> The second amendment also provides that if and to the extent that any payments at the recalculated rates were due to the Company from the customer prior to the effectiveness of the recalculated rates under the second amendments, the customer will pay the company the difference in rates times the number of payments due to the Company prior to the effectiveness of the second amendment.

**In the Matter of The Petition of Elizabethtown Gas Company, A Division of  
NUI Corporation, For (1) Approval of An Amendment to A Contract With  
Roche Vitamins Inc., And (2) A Protective Order And Exemption From  
Public Disclosure of Confidential Information  
BPU DOCKET NO. GM99020094**

**SERVICE LIST**

Nusha Wyner, Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Dennis Moran, Assistant Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Alice Bator, Bureau Chief  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Seema M. Singh, Esq.  
Acting Director  
Division of the Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
Newark, NJ 07101

Caroline Vachier, DAG  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07102

Helene Wallenstein, DAG  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07102

Ron Sorenson  
Roche Vitamins Inc.  
205 Roche Drive  
Belvidere, NJ 07823

Judith B. Appel, Esq.  
Division of the Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Fl.  
Newark, NJ 07101

James Giuliano  
Division of Service Evaluation  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Mary Patricia Keefe, Esq.  
Associate General Counsel  
& Dir. of Regulatory Affairs  
NUI Corporation  
One Elizabethtown Plaza  
Union, NJ 07083

Paul J. Chymiy, Esq.  
Sr. Attorney & FERC Counsel  
NUI Corporation  
550 Route 202-206  
Bedminster, NJ 07921

Elise Goldblat, DAG  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street  
P.O. 45029  
Newark, NJ 07101

03 SEP -2 PM 3:45  
BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

SEP 03 1:53

In The Matter Of The Petition Of :  
Elizabethtown Gas Company, A :  
Division Of NUI Corporation, for :  
(1) Approval Of An Amendment To : BPU Docket No. GM99020094  
A Contract With Roche Vitamins Inc., :  
And A Protective Order And (2) :  
Exemption From Public Disclosure :  
Of Portions Of The Aforementioned :  
Special Contract :

03 SEP -3 AM 2:16  
BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.  
J.D.  
HALL ROOM

Background Statement

By letter petition dated February 4, 1999, NUI Utilities, Inc. d/b/a Elizabethtown Gas Company ("Elizabethtown" or "Company") requested the Board of Public Utilities ("Board"): (1) to approve, pursuant to N.J.A.C. 14:3-9.6, an amendment to a special contract for the transportation of natural gas to Roche Vitamins Inc. ("Roche"), and (2) to issue a protective order and exemption from public disclosure of portions of the special contract, as amended.

Elizabethtown presently serves the natural gas requirements of Roche's cogeneration facility located in Belvidere, New Jersey under the terms of a special contract ("Agreement") between the parties dated January 31, 1997. The Agreement was approved by the Board in a Decision and Order dated November 7, 1997 in Docket No. GM97040216 ("Decision and Order"). Under the terms of the Agreement, Elizabethtown will provide service to Roche for a term of twenty-one years.

The Agreement avoided a bypass of Elizabethtown's distribution system by Roche, which is located proximate to Columbia Gas Transmission's and Transcontinental Gas Pipe Line Corporation's interstate pipeline facilities. In order to provide service to Roche, Elizabethtown constructed a fourteen-mile pipeline to the Roche facility. The rates for service charged by Elizabethtown to Roche as set forth in the Agreement were calculated based on Elizabethtown's pre-construction estimate of the costs of the pipeline. The pipeline was completed and service to Roche commenced under the Agreement in May, 1998. Since the completion of construction, the actual costs



associated with the pipeline construction have been ascertained. Therefore, the rates set forth in the Agreement require modification in order to reflect the actual costs to be borne by Roche.

In the proposed Second Amendment to the Agreement dated December 17, 1998 ("Second Amendment"), Elizabethtown and Roche have agreed upon such revised rates. Inasmuch as the Decision and Order require that any change in the pricing terms of the Agreement shall be subject to Board review and approval, Elizabethtown filed its letter petition with the Board on February 4, 1999.

In addition, in August 1998, at Roche's request, Elizabethtown and Roche entered into a service agreement under Elizabethtown's Cogeneration Service Interruptible rate schedule ("CSI Agreement"). The Agreement in its present form only provides for Elizabethtown to render transportation service to Roche; CSI is an interruptible sales service. By entering into the CSI Agreement with Roche, Elizabethtown has the opportunity to make sales to Roche that it would not otherwise make. Margins on such sales will be shared with the Company's firm ratepayers in accordance with the CSI tariffed rate schedule, with the ratepayers receiving eighty percent of the margins through a credit to the cost of gas in the Company's Basic Gas Supply Service. Roche is uniquely situated and is the sole customer on the pipeline that was constructed for its benefit. The pipeline is not integrated into the remainder of Elizabethtown's distribution system. Since the CSI service will be provided to Roche through the same dedicated pipeline that was constructed to transport the natural gas under the Agreement, Roche has requested, and Elizabethtown has agreed, subject to the Board's approval, to apply the reduced transportation fuel shrinkage percentage contained in the Agreement, and which was approved by the Board, to the CSI service in lieu of the shrinkage set forth in the CSI tariffed rate schedule. In all other respects, the CSI service will be provided in accordance with the terms and conditions of the CSI tariffed rate schedule. The proposed Second Amendment includes the addition of CSI service, as described above. Finally, Elizabethtown had requested that the Board issue a protective order and exemption from public disclosure of the redacted portions of the Agreement, as amended.

Representatives of the Board's Staff, the Division of the Ratepayer Advocate, and Elizabethtown, the only parties to this proceeding, have conducted discovery and have

discussed the issues raised by Elizabethtown's proposed Second Amendment. As a result of these efforts, the parties have reached a stipulation as to all issues in this proceeding.

### Stipulation

Based upon and subject to the terms and conditions set forth herein, the parties stipulate and agree as follows:

- A. **Approval of the Contract.** The parties agree that the Board should approve Elizabethtown's Second Amendment with Roche in accordance with its terms.
- B. **Protective Order and Exemption from Public Disclosure.** The Company agrees to withdraw its request for a protective order and exemption from public disclosure as set forth in its February 4, 1999 letter petition to the Board.
- C. **Conditions.** The parties agree that the approvals granted herein shall be subject to the following conditions:
  1. Approval of this Stipulation shall not be regarded as establishing any precedent in any future proceedings involving approval of special contracts between Elizabethtown and its customers. The parties agree that this Stipulation recognizes the unique circumstances surrounding service to Roche.
  2. The parties to this proceeding readopt and reaffirm the terms and conditions set forth in the November 7, 1997 Decision and Order. Specifically, but not by way of limitation, the parties agree and acknowledge that nothing in the instant proceeding or in this Stipulation in any manner modifies, amends, or otherwise alters: (a) the terms and conditions of the Decision and Order or Paragraph A of the Stipulation attached thereto and incorporated therein, including, but not limited to the conditions that (i) under no circumstance will the Agreement, as amended, create any net revenue requirement for other

ratepayers of Elizabethtown unless the parties agree that a benefit inures to other ratepayers, and (ii) Elizabethtown will bear all risks of any revenue shortfalls between the revenues realized under the Agreement, as amended, and the total costs relating to the capital investment, construction and operation of the fourteen-mile pipeline and associated equipment serving the Roche facility; or (b) the rights of the parties under the Decision and Order or Paragraph A of the Stipulation.

- D. **Entirety of Stipulation.** The parties agree that this Stipulation contains mutual balancing and interdependent adjustments, and is intended to be accepted and approved in its entirety. In the event that any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, then any party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board in its order in this matter, then any party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed.
- E. **Binding Effect.** It is the intent of the parties that the provisions hereof be approved by the Board as being in the public interest. The parties further agree that they consider this Stipulation to be binding on them for all purposes herein.
- F. **General Reservation.** It is specifically understood and agreed that this Stipulation represents a negotiated agreement as, except as expressly provided for herein, is intended to be binding only as to the matters specifically addressed herein. Except as expressly provided for herein, neither the Company, the Board, its Staff, nor the Division of The Ratepayer Advocate shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein. By executing this Stipulation, no

party waives any right it has under any prior stipulation. The contents of this Stipulation, in total or by specific items, by inference, inclusion or deletion, shall not in any way be considered, cited or used by the undersigned as an indication of any party's position on any related or other issue litigated in any other proceeding or forum.

WHEREFORE, the parties hereto do respectfully submit this Stipulation to the Board of Public Utilities and request the Board to issue a Decision and Order approving this Stipulation in its entirety in accordance with the terms hereof.

**NUI UTILITIES, INC.**  
d/b/a Elizabethtown Gas Company

By: Victor A. Fortkiewicz  
Victor A. Fortkiewicz  
Vice President

**DIVISION OF THE RATEPAYER ADVOCATE**  
Seema M. Singh, Esq.  
Ratepayer Advocate

By: Judith B. Appel  
Judith B. Appel  
Assistant Deputy Ratepayer Advocate

**STAFF OF THE BOARD OF PUBLIC UTILITIES**  
Peter Harvey, Attorney General of New Jersey

By: Caroline Vachier  
Caroline Vachier  
Deputy Attorney General

Dated: 8/23/03, 2003

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BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.

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BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.  
S.D.

**APPENDIX**  
**Item 3**



Agenda Date: 12/16/10  
Agenda Item: 2B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
Two Gateway Center, Suite 801  
Newark, NJ 07102  
[www.nj.gov/bpu](http://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 STIPULATION OF SETTLEMENT (SUPPLEMENTAL PROCEEDING)
	)	DOCKET NO. GR09050422

APPEARANCES:

**Tamara Linde, Esq., Gregory Eisenstark, Esq., (PSEG Services Co.), Richard L. Roberts, Esq.,** (Steptoe and Johnson, LLP), on behalf of Public Service Electric and Gas Company

**Stefanie A. Brand, Esq.,** Director and **Sarah H. Steindel, Esq.,** on behalf of the New Jersey Division of Rate Counsel

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

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

**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

**James Laskey, Esq.** (Norris, McLaughlin and Marcus, P.A.), on behalf of the Independent Energy Producers of New Jersey

**Catherine E. Tamisik, Esq.,** (DeCotiis, Fitzpatrick & Cole, LLP), on behalf of NAEA Ocean Peaking Power

BY THE BOARD:

By this Decision and Order, the New Jersey Board of Public Utilities ("BPU" or "Board") considers a Stipulation of Settlement entered into in the above-captioned matter among Public Service Electric and Gas Company ("PSE&G" or "Company"); the New Jersey Division of Rate

Counsel ("Rate Counsel"); Board Staff ("Staff"); the New Jersey Large Energy Users Coalition ("NJLEUC") whose members are Novartis Pharmaceuticals Corporation, Merck and Company, Inc., Anheuser Busch, Inc., Princeton University, and BJ's Wholesale Club, Inc., the Electric Customer Group, 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"); the Independent Energy Producers of New Jersey ("IEPNJ"), and NAEA Ocean Peaking Power ("OPP") (collectively, the "Parties") .

## **BACKGROUND**

Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, on May 29, 2009, PSE&G filed a petition with the 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 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.<sup>1</sup>

Public hearings were held on December 14, 15 and 18, 2009. The case was transmitted to the Office of Administrative Law ("OAL") for the development of a record. Testimony was filed and discovery conducted under the schedule set by Administrative Law Judge ("ALJ") Walter Braswell. 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. As a result of numerous settlement conferences a Stipulation of Settlement was executed among PSE&G, Rate Counsel, Staff, and NJLEUC which was adopted by ALJ Braswell, and filed with the Board on May 27, 2010 ("May Stipulation"). ECG opposed approval of the May Stipulation as it related to the gas base rates. The Board subsequently issued two Orders approving the May Stipulation with modifications: an Order dated June 7, 2010 approving the electric rates portion ("June Order"); and an Order dated July 9, 2010 approving the gas rates portion ("July Order").

Pursuant to the July Order, the Board initiated two proceedings. The Board directed Staff to open a generic stakeholder proceeding in a new docket to examine certain gas-related issues ("Generic Proceeding"). According to the July Order, the Generic Proceeding would address, among other issues, a review of "evergreen" provisions, as well as discounted gas utility distribution rates and contracts, and the applicability of the Societal Benefits Charge ("SBC"), Regional Greenhouse Gas Initiative ("RGGI") and Capital Adjustment Clause ("CAC") charges prospectively to customers with an ability to by-pass the utility's gas distribution system. Commissioner Fiordaliso was designated as the presiding officer of the Generic Proceeding.

The July Order also initiated a supplemental proceeding within this rate case docket to examine issues raised by ECG and NJLEUC ("Supplemental Proceeding") related to the rates charged to PSE&G's affiliate, PSEG Power, LLC ("PSEG Power"). The Board ordered that the record in the gas base rate case be supplemented to address the following issues:

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<sup>1</sup> For further detail on the background of this case refer to I/M/O the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service B.P.U.N.J. No. 14 Electric and B.P.U.N.J. No. 14 Gas Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1 and for Approval of a Gas Weather Normalization Clause; a Pension Expense Tracker and for Other Appropriate Relief, Orders dated June 7, 2010 and July 9, 2010.

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

The four issues set forth in the July Order are referred to as the "Supplemental Issues." In addition, the July Order designated Commissioner Asselta as the presiding officer on the Supplemental Proceeding.

### **SUPPLEMENTAL PROCEEDING**

The Parties participated in two pre-hearing conferences and thereafter concurred on a proposed procedural matter for the Supplemental Proceeding. PSE&G and ECG also entered into a stipulation on July 29, 2010 regarding the interim gas distribution rates for Elmwood Park and Bayonne ("July 29 Stipulation"). Subsequently, Commissioner Asselta issued two orders dated August 3, 2010. One was a pre-hearing order which established a procedural schedule including evidentiary hearings for October 25 - 27, 2010, and set a deadline for the filing of motions to intervene. The second order approved the July 29 Stipulation.

The following entities filed motions to intervene: IEPNJ, Sempra Energy Trading, LLC ("SET"), Monitoring Analytics, LLC; and Ocean Peaking Power, LLC ("OPP"). On August 23, 2010, PSE&G filed replies opposing the intervention of OPP and SET. By Order dated September 15, 2010, Commissioner Asselta ruled on the motions granting IEPNJ intervenor status; granting SET and Monitoring Analytics, LLC participant status; and denying OPP's motion. Subsequently on September 21, 2010, OPP filed a motion for reconsideration of Commissioner Asselta's September 15, 2010 Order. On September 28, 2010, PSE&G filed a reply opposing OPP's motion for reconsideration. In an Order dated October 18, 2010, Commissioner Asselta granted OPP intervenor status.

On August 13, 2010, PSE&G filed the supplemental direct testimony of David Wohlfarth, Frederick Lark, Anthony Fuhrman, and Dr. John Morris. ECG filed the supplemental direct testimony of Dennis Clarke. On August 18, 2010, PSE&G filed a motion to have the rates, terms and conditions regarding gas transportation at the Camden and Newark Bay plants deemed public. By Order dated August 30, 2010, Commissioner Asselta granted this motion.

Written discovery was subsequently exchanged between the Parties. On September 7, 2010, ECG filed a motion seeking to serve subpoenas on PSEG Power, LLC. On September 14, 2010, PSE&G filed a reply opposing this motion. On September 15, 2010, Commissioner Asselta issued an Order denying ECG's motion.



On September 24, 2010, PSE&G filed the rebuttal testimony of Dr. John Morris. ECG filed the rebuttal testimony of John Reed. After receiving an extension of time, IEPNJ filed the rebuttal testimony of Robert Chilton on October 1, 2010. PSE&G and ECG served and responded to written discovery on the rebuttal testimony.

By e-mail on October 19, 2010, PSE&G requested a suspension of the Supplemental Proceeding schedule on consent of all Parties to facilitate settlement discussions. By Order dated October 20, 2010, Commissioner Asselta granted that request pending notice from PSE&G that the matter had been settled or that the Parties agreed to a revised schedule.

### **STIPULATION OF SETTLEMENT<sup>2</sup>**

The Parties have engaged in settlement negotiations. On December 8, 2010, a Stipulation of Settlement ("December 8 Stipulation") was executed by the Parties. The December 8 Stipulation provides:

- 1 There will be no retroactive adjustments to rates and no refunds with respect to the rates charged by PSE&G for any gas transportation service that is within the scope of the Supplemental Issues.
2. Effective the first day of the month immediately following the Effective Date as defined in the Stipulation, the total rate for the transportation of natural gas on the PSE&G system to Bayonne and Elmwood Park will be established at 42.5 cents per dekatherm (4.25 cents per therm) and all other provisions of Rate Schedule Transportation Gas Service-Non-Firm ("TSG-NF"), with the exception of those regarding natural gas delivery service rates and the SBC, RGGI and CAC charges, shall be applicable to Bayonne and at Elmwood Park.
3. The contract rates currently charged to Camden and to Newark Bay will remain in effect in accordance with the contract terms; provided, however, that upon expiration of the initial terms of such contracts, the rates to be paid by Camden and Newark Bay shall become a total rate of 42.5 cents per dekatherm (4.25 cents per therm), and all other provisions of Rate Schedule TSG-NF, with the exception of those regarding natural gas delivery service rates, and the SBC, RGGI and CAC charges, shall be applicable to Camden and Newark Bay. The foregoing provisions are without prejudice to the right of any party to argue any position, and the Board's authority to make a determination, on whether the contracts applicable to Camden and Newark Bay may be extended beyond their initial terms in accordance with "evergreen" provisions contained in those contracts.
- 4 The rate provisions applicable to Bayonne and Elmwood Park, and the rate provisions applicable to Camden and Newark Bay after the expiration of the initial terms of the Camden and Newark Bay contracts, as set forth in Paragraphs 2, and 3 to the Stipulation, shall remain in effect until three years from the Effective Date, at which time such rate provisions, in the absence of any further Board Order, shall terminate.

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<sup>2</sup> 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.

5. To the extent Bayonne, Elmwood Park, Camden and Newark Bay provide to PSE&G appropriate documentation to demonstrate that they are exempt from New Jersey sales and use taxes, PSE&G shall not charge such entities for New Jersey sales and use taxes. Board Staff takes no position on whether these entities are legally exempt from said taxes, however.
6. Camden and Newark Bay shall have the option, to be effective the first day of the month immediately following the Effective Date, and continuing thereafter, to terminate their existing gas transportation agreements with PSE&G.
7. PSE&G will continue to charge PSEG Power a total rate of 42.5 cents per Dth (4.25 cents per therm) for gas transportation service to each of its generation facilities taking such service<sup>3</sup>. This rate will not be altered by PSE&G for any reason, until after completion of the anticipated BPU Generic Proceeding to establish rules governing discounting of agreements, and a subsequent filing implementing such rule to the transportation rates charged to PSEG Power's electric generation facilities; provided, however, that if the Generic Proceeding is not completed twenty-four months following the Effective Date, PSE&G may, thereafter, file with the BPU to seek a change in rates charged to PSEG Power.
8. Nothing in the Stipulation shall affect the right of PSEG Power or ECG to bypass PSE&G's natural gas distribution system.
9. Each of the NJLEUC Members shall receive from PSE&G a credit equal to 30 cents per dekatherm (3 cents per therm) towards the payment of its charges for gas distribution service provided by PSE&G; provided, however, that the total amount of the credit to all NJLEUC Members, in aggregate, shall not exceed \$765,000. This credit shall commence on the first day of the month immediately following the Effective Date, and shall terminate on the sooner of (i) the date on which the total amount of the credit to all NJLEUC Members, in aggregate, reaches \$765,000, or (ii) one year after the date on which the credit commenced. The amount of the credits provided by PSE&G to the NJLEUC Members as set forth in this paragraph shall be funded from MEG's payments at the 42.5 cent per dekatherm rates set forth in Paragraphs 2-4 of the Stipulation.
10. The TSG-NF tariff rate approved by the BPU on a provisional basis in its July 9, 2010 order shall be deemed final, with no refunds or credits due. The TSG-NF rate currently applicable to Bayonne and Elmwood Park as a result of the stay entered in conjunction with the July 29 Stipulation shall remain in effect until the Effective Date, after which it shall be deemed final, with no refunds or credits due.
11. PSE&G will provide on a confidential basis each year to Monitoring Analytics, LLC, or a successor entity responsible for monitoring the PJM market, the rates PSE&G charges for gas transportation for all generating plants that sell wholesale power into PJM to which PSE&G provides gas transportation service. Such information will be masked to protect customer confidentiality unless the customer consents to release of their name or the BPU otherwise finds that the information is not confidential.

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<sup>3</sup> The rate of 42.5 cents per Dth for PSEG Power was established in I/M/O Public Service Electric and Gas Company=s 2006/2007 Annual BGSS Commodity Charge Filing for Its Residential Gas Customers Under Its Periodic Pricing Mechanism and for Changes in the Gas Tariff Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:21.1, BPU Docket No. GR06050409, OAL Docket No. PUC 11528-2006N, Order dated July 12, 2007, and said rate was not to be revised for at least three years.

12. The Stipulation includes for approval an Option Agreement (in the form attached to the Stipulation) for ECG to purchase the lateral gas line that delivers gas to Camden at fair market value, utilizing an appraiser to be mutually agreed upon by appraisers for ECG and PSE&G, and subject to the following: (1) BPU determination that the purchase price reflects fair market value and approval of the sale and purchase in a written order that is acceptable to ECG and PSE&G; (2) an indemnity clause obligating ECG acceptable to ECG and PSE&G; (3) that the purchased pipe is to be owned and operated from the moment of exercise of the option by an interstate pipeline subject to all requirements regarding safety and integrity of such pipes; and (4) that the purchase price is to be reduced, but not to an amount less one dollar (\$1.00), by the amount of the capital contribution towards the lateral already made by Camden.
13. The Parties recognize that discounted gas distribution rates to gas-fired electric generators may, under certain circumstances, affect wholesale power prices and, therefore, affect retail electric rates for New Jersey ratepayers. As noticed by the BPU on October 25, 2010, Docket Nos. GR10100761 & ER10100762, the "Generic Proceeding" will address the question of whether discounted utility gas distribution rates or other discounted charges should be available for customers who can show a demonstrated ability to by-pass the utility's gas distribution system. The Parties recommend that the Generic Proceeding include consideration of whether discounted utility gas distribution rates or charges should be available for customers who can demonstrate that such discounted rates or charges will result in a benefit to New Jersey electric ratepayers. By recommending that this issue be considered by the Board in the Generic Proceeding, no Party commits to any particular position on this issue for purposes of that proceeding.
14. Except as specifically provided herein, the Stipulation does not affect any existing agreement between PSE&G and any electric generation customer of PSE&G.
15. The Parties agree that the issue of whether the SBC, the RGGI, and/or the CAC should be applicable to wholesale electric generators taking gas delivery service from a local distribution company should be resolved as part of the Generic Proceeding, and recommend that such issue be resolved promptly in order to facilitate the negotiation of expiring and future contracts.
16. The Parties recognize that the Supplemental Issues include issues of policy that are expected to be addressed, on a prospective basis, in the Generic Proceeding. The Parties have reached this Stipulation in recognition of the need to address issues relating to rates previously in effect and the rates to be in effect unless and until they are changed as a result of the pending Generic Proceeding and related proceedings before the Board. The Parties agree that the Stipulation provides a reasonable resolution of the issues remaining to be determined in this docket, in light of the pendency of the Generic Proceeding. By entering into the Stipulation, no Party admits that any rate charged, and which is in issue in the supplemental proceeding, was unjust, unreasonable, discriminatory, or preferential. PSE&G and ECG have agreed to release one another as to all claims which ECG or MEG raised or could have raised in the FERC Docket No. EL10-79 or BPU Docket No. GR09050422. Except as specifically provided in the Stipulation, nothing herein shall affect the rights of any Party to advance any argument in the Generic Proceeding regarding the determination of gas transportation rates to be charged prospectively to any generation facility, or any other issue within the scope of the Generic Proceeding.

17. Neither the Stipulation, nor any act performed or document executed pursuant to or in furtherance of the Stipulation: (i) is or may be used as an admission of, or evidence of, the validity of any claim of wrongdoing; (ii) is or may be used as an admission of, or evidence of, any wrongful act or omission of any of the Parties in any civil, criminal, regulatory, or administrative proceeding in any court, administrative agency, regulatory authority, or other tribunal.
18. The Stipulation shall be a public document filed with the BPU for approval. The Stipulation shall not become effective unless it is approved by the BPU in its entirety without any change or condition deemed unacceptable to any Party ("Effective Date"). If the BPU does not issue an order approving the Stipulation on or before January 1, 2011, PSE&G and ECG reserve the right to withdraw from the Stipulation and shall retain all rights of litigating parties.
19. The Parties recommend that the Stipulation be considered by the Board at a regularly scheduled Agenda Meeting. The Parties further agree that the new gas distribution rates resulting from the Stipulation should be effective upon the date specified in Paragraph 2 of the Stipulation.
20. It is specifically understood and agreed that the Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, the Parties shall not be deemed to have approved, agreed to, or consented to any rate or term of service for gas-transportation service or any other Board-regulated utility service provided by PSE&G to any customer or class of customers, principle or methodology underlying or supposed to underlie any agreement provided herein in total or by specific item, or ratemaking principle or methodology connected to any contested issue in the Generic Proceeding, a currently pending Board proceeding, or future Board proceeding. The Parties further agree that the Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of the Stipulation.

On December 9, 2010, the Stipulation was posted on the Board's website for public comment. No comments were received.

### **DISCUSSION AND FINDING**

As a preliminary matter, the Board **HEREBY RATIFIES** all provisional rulings by Commissioner Asselta for the reasons stated in his Orders.

Turning to the substance of the matter before us today, the Board has carefully reviewed the December 8 Stipulation and has done so, as have the Parties in entering into the Stipulation (December 8 Stipulation at && 13, 15, 16), fully cognizant that there are issues to be reviewed, considered and decided in the Generic Proceeding relating to whether discounts of gas distribution rates and other charges should be available to customers of PSE&G, among other utilities, who can show a demonstrated ability to by-pass the utility's gas distribution system. The Generic Proceeding also should, as recommended by the Parties (December 8 Stipulation at & 13), include consideration of whether discounted utility gas distribution rates or charges should be available for customers who can demonstrate that such discounted rates or charges will result in a benefit to New Jersey electric ratepayers. As contemplated by our July 9, 2010 Order, the Generic Proceeding also will include consideration of the applicability of SBC, RGGI and CAC charges to customers with an ability to by-pass the utility's gas distribution system,

and we agree with the Parties (December 8 Stipulation at & 15) that the Generic Proceeding also should resolve the issue of whether the SBC, RGGI and/or CAC charges should be applicable to wholesale generators taking gas delivery service from a local distribution company. Notice of the ongoing Generic Proceeding which will soon be published in newspapers within the State already lists these as issues to be addressed.

Though the aforementioned issues originally arose in this PSE&G rate case, as the Board determined in its July Order, it is appropriate for an exploration of issues of statewide impact to be considered in a Generic Proceeding open to all interested stakeholders. Yet, the Board, like the Parties (December 8 Stipulation at & 16), recognizes that there are Supplemental Issues remaining to be considered and decided in this PSE&G docket, and included are issues that will be addressed on a prospective basis in the Generic Proceeding. Thus, the Board agrees with the Parties that there is a need to address issues relating to PSE&G gas rates previously in effect as well as rates to be in effect, unless and until they are changed as a result of the Generic Proceeding and related Board proceedings (December 8 Stipulation at & 16).

In carefully considering whether or not to approve the December 8 Stipulation while issues remain to be decided in the pending Generic Proceeding, the Board is mindful of current economic conditions, as well as our previously expressed concern with ensuring that sufficient generation exists to meet the electric power needs of New Jersey on a going forward basis. See Decision and Order, In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1, 2010, Docket No. EO09050351 (December 10, 2009). The Board also is aware that the cost of gas used by generators such as PSEG Power and the ECG customers has been cited as a factor in their ability to compete in the retail and wholesale energy markets. ECG has maintained that the increased costs of service on PSE&G's TSG-NF rate have made the ECG customers on that rate less competitive, and that they need a more competitive rate in order to maintain sufficient operational run time that could justify any expansion of their facilities in the State. Allowing the ECG customers to be charged the same rate as PSEG Power for a period of time, as proposed by the Stipulation, may help to increase competition in the energy market for the benefit of the State's retail electric customers. The balance struck in reaching the PSE&G gas rates and other provisions set forth in the Stipulation allows for an opportunity for all interested stakeholders to provide input and for the Board to comprehensively consider the Generic Issues, while in the meantime, also providing some certainty to the utility, its ratepayers, and other parties, all of whom are in agreement as to the status quo to be maintained. Having carefully considered the Stipulation entered into by all of the Parties, including PSE&G, NJLEUC, IEPNJ, OPP, ECG, Rate Counsel, and Board Staff, and which all of the Parties agree should be approved as being in the public interest, the Board is persuaded that the balance effected by the Stipulation is appropriate and reasonable at this time.

For the foregoing reasons, the Board **HEREBY FINDS** the Stipulation of all of the Parties to the proceeding to be reasonable and in the public interest, and, **HEREBY APPROVES** the attached Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully stated herein.

The Board **HEREBY APPROVES** the Option Agreement for ECG to purchase the lateral gas line that delivers gas to Camden at the to be determined fair market value, subject to the provisions of N.J.A.C. 14:1-5.6.


The Board **HEREBY SETS** the TSG-NF rate previously approved on a provisional basis as a final rate with no adjustments.

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.

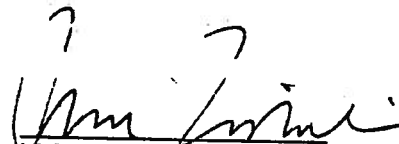
DATED: 12/22/10

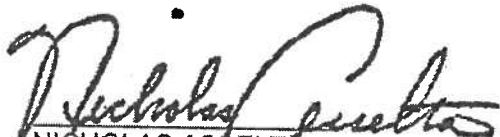
BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
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

