



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY FOR) DECISION AND ORDER
APPROVAL OF THE CONSTRUCTION OF THE) APPROVING STIPULATION
MASON SUBSTATION DAMAGED DURING)
SUPERSTORM SANDY) BPU DOCKET NO. EO16080788

Parties of Record:

Matthew M. Weissman, Esq., for the Petitioner, Public Service Electric and Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Windels Marx Lane & Mittendorf, LLP, on behalf of New Jersey Transit
Steven Goldenberg, Esq., Fox Rothschild, LLP on behalf of New Jersey Large Energy Users Coalition

BY THE BOARD:

BACKGROUND AND PROCEDURAL HISTORY

On May 21, 2014, the New Jersey Board of Public Utilities ("Board") issued an order approving a settlement of Public Service Electric and Gas Company's ("PSE&G" or "Company") Energy Strong, a comprehensive investment program to harden the Company's electric and gas infrastructure to make them less susceptible to damage from wind, flying debris and water damage in anticipation of major storm events.¹ The Energy Strong program, includes several subprograms, including an Electric Station Flood Mitigation subprogram designed to implement flood mitigation for identified electric substations that experienced water intrusion during Superstorm Sandy, Hurricane Irene, or other recent water intrusion events.

On August 15, 2016, PSE&G filed a petition with the New Jersey Board of Public Utilities ("Board"), seeking approval to construct, own and operate a replacement Substation ("New Substation" or "Project") at the site of the current Mason and Building 9 substations ("Existing Substation"), which are located adjacent to each other in Kearny, New Jersey. The Existing Substation(s) are owned by New Jersey Transit Corporation ("NJ Transit") and include some

¹ In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, Docket Nos. EO13020155 and GO130020156 (May 21, 2014).

PSE&G transmission facilities; however PSE&G requested approval for the Company to construct, own and primarily operate the New Substation.

According to the Company, the Existing Substation serves as a flow-through facility for power transmitted by PSE&G throughout Northern New Jersey and, as such, is critical to the reliability of electric service in Northern New Jersey. More specifically, the Existing Substation is currently configured as a 230 kilovolt ("kV") substation containing a single 230 kV high-side bus-tie circuit breaker that splits the 230 kV PSE&G transmission line into two circuits that terminate at the PSE&G Athenia and Essex substations respectively. Any failure at the Existing Substation would reduce the availability of power to PSE&G's Athenia and Essex substations, and result in PSE&G's Cook Road and Kingsland substations being deprived of an alternate source of power. The Existing Substation presents a single point of failure risk that can only be eliminated through the construction of the New Substation.

Additionally, the Existing Substation is critical to the reliability of rail transportation service in Northern New Jersey. The Existing Substation is the source of traction power for a 14.5 mile segment of NJ Transit's Morris & Essex Lines between Maplewood and Hoboken, including critical connection points for travel into and out of New York City. PSE&G claims that the Existing Substation was severely damaged during Superstorm Sandy and requires replacement. The Company submits that the proposal is similar to the substation resiliency projects included in the Energy Strong Electric Station Flood Mitigation subprogram.

PSE&G further claims that the Project would enhance the reliability and resiliency of PSE&G's provision of energy service to the larger region, and would be capable of providing highly reliable, sufficient power to NJ Transit's electric traction system, maintenance facilities, and other related facilities and systems.

The Company states that the New Substation will serve a role in the operation of NJ Transit's nationally recognized project, NJ Transit Grid, a proposed micro-grid system that will provide reliable power to support a core segment of NJ Transit's transportation service in northern New Jersey and the Hudson River crossings in the event of an electrical system failure resulting in the interruption of electric delivery service to NJ Transit. The Company estimates that the New Substation will be first placed into service December 2020.

PSE&G claims that the Existing Substation is critical to NJ Transit's operations, and understands that the Existing Substation is considered the most important traction power substation facility on the NJ Transit system. In addition, the Building 9 section of the Existing Substation supports the operations of the Meadows Maintenance Complex, which is NJ Transit's major maintenance facility servicing its entire fleet. The Building 9 Substation also provides power to the NJ Transit Rail Operations Center ("ROC"), which is the central command and control facility for all train movements statewide, including train control, signal and power dispatching operations. PSE&G states that it understands that NJ Transit considers the ROC to be the most critical operations facility in the NJ Transit system.

The Company proposes to recover its portion of the project costs through distribution rates using a mechanism similar to that adopted in the Energy Strong proceeding. Specifically, PSE&G proposes that the cost recovery will occur for the New Substation investment through three (3) "rate roll-ins." The Company also seeks approval of a revised High Tension Service ("HTS") tariff to include a special provision for services provided to the new substation and a cost-recovery mechanism entitled Substation Adjustment Mechanism ("SAM") that permits the

recovery of capital expenditures in the New Substation as it is placed into service, plus Allowance for Funds Used During Construction.

By Order dated September 23, 2016, the Board designated Commissioner Joseph L. Fiordaliso as the presiding commissioner with authority to rule on all motions that arise during the proceeding, and to set a schedule that to secure a just and expeditious determination of the issues.

On August 16, 2016 and September 27, 2016, NJ Transit and the New Jersey Large Energy Users Coalition ("NJLEUC") filed motions to intervene, respectively. NJLEUC also filed a motion for the admission pro hac vice of Paul Forshay, Esq. There was no opposition filed to the motions.

By Order dated December 15, 2016, Commissioner Fiordaliso granted the motions filed by NJ Transit and NJLEUC, and issued a Prehearing Order and accompanying procedural schedule. Following proper notice, public hearings were held in both the afternoon and the evening on January 10, 2017 in Mount Holly, January 12, 2017 in New Brunswick and January 13, 2017 in Hackensack. No members of the public spoke at the hearings or filed written comments with the Board.

The parties engaged in multiple settlement conferences during 2016 and 2017. Several phone conferences were also held. On May 1, 2017, Rate Counsel submitted the pre-filed testimony of witnesses Robert Fagan and Andrea Crane. On June 6, 2017, Commissioner Fiordaliso revised the procedural schedule which granted the parties additional time to complete discovery and rescheduled the evidentiary hearings in August 2017. The hearings were subsequently adjourned.

STIPULATION²

Following the review of discovery, testimony, and transcripts, on or about November 9, 2017 PSE&G, the New Jersey Division of Rate Counsel ("Rate Counsel"), NJLEUC, NJ Transit and Board Staff (collectively, "Signatory Parties") executed a stipulation and settlement agreement ("Stipulation") resolving all of the issues in the proceeding. In pertinent part, the Stipulation provides the following:³

16. PSE&G shall be permitted by the Board to demolish the Existing Substation and reconstruct, own and operate the New Substation as set forth in the Stipulation of Settlement and attachments. The New Substation will be a PSE&G owned asset that is part of PSE&G's electrical system used to provide utility service to NJ Transit. The Mason Substation reconstruction project will be performed by PSE&G subject to the Board's jurisdiction and under the standards applicable to public utility construction projects, and pursuant to the terms and conditions of the Construction Coordination and Protocol Agreement attached to the Stipulation ("Construction Agreement").
17. Based upon the revised system design discussed above, the Company's cost estimate for the Project is a base cost of \$206 million. The base cost estimate

² Although summarized in this Order, the detailed terms of the Stipulation control, subject to the findings and conclusions of the Order.

³ The paragraphs herein are numbered in the same sequence as in the Stipulation.

does not include Risk & Contingency ("R&C"). Although NJ Transit and PSE&G agree on the estimate of the Project's base cost of \$206 million, they each use a different R&C amount in estimating the total cost estimate for the Project ("Estimated Project Cost").⁴ PSE&G's Estimated Project Cost is based upon information known by PSE&G at this time and only includes R&C for such known costs.

18. The Estimated Project Cost includes reimbursement to NJ Transit for various reasonable costs NJ Transit has incurred, and is expected to incur, in connection with the Project. NJ Transit's reimbursable costs include the following categories: NJ Transit Project Management; Design Work and Design Review; Constructability Review; Procurement Support; Construction Assistance; Force Account; Flagging; and Contingency and Escalation on these future costs ("Ancillary Costs"). The Project Cost Estimate includes a reimbursement amount for non-disputed Ancillary Costs limited to \$15.6 million. (See PSE&G Revised Response to RCR-ENG-0058 and Schedule J of the Construction Agreement). The Estimated Project Cost does not include costs for the property easement access rights from NJ Transit that are required for the Project, which costs are estimated to not exceed \$75,000.00. Costs that PSE&G incurs to acquire property rights required for the Project will be included in the Project Costs and shall not exceed fair market value.

The costs to replace the Mason Substation ("Project Costs") shall be funded by a combination of investment by PSE&G and by a non-shareholder capital contribution to be made by NJ Transit to PSE&G ("NJ Transit Contribution") in an amount estimated by NJ Transit at \$132 million. The amount of the NJ Transit Contribution may change as described in Paragraph 26 of the Stipulation. The costs to be incurred by PSE&G for the Project shall be limited to \$100 million (except as described in Paragraphs 19 and 26 of the Stipulation, and in Section 7.4 of the Construction Agreement), and are to be recovered in a base rate case proceeding as set forth in the Stipulation. Notwithstanding the foregoing, investment by PSE&G recoverable from distribution ratepayers will not exceed \$100 million except as provided in Paragraphs 19 and 26 of the Stipulation. Due to the unique circumstances of the damage caused by Hurricane Sandy, the \$100 million investment by PSE&G shall be part of the \$1.22 billion of investment authorized by the Board in connection with its approval of the Energy Strong Program. NJ Transit shall be responsible for the payments of all the Project Costs in excess of \$100 million except as described in Paragraphs 19 and 26 of the Stipulation and

⁴ PSE&G proposes a Risk and Contingency ("R&C") level of \$38 million based upon information known to it regarding the current proposed design; the proposed location (revised from the specific location proposed originally), and its Monte Carlo Simulation Risk Analysis at a ninety percent (90%) Confidence Level assumption, which would result in a total estimated Project cost of \$244 million. NJ Transit proposes a \$26 million R & C level based on a ten percent (10%) confidence assumption, which would result in a total estimated Project cost of \$232 million. NJ Transit does not concur with PSE&G's assumption, given the subsurface investigation performed to date, environmental due diligence (including testing) performed on property adjacent to the site area, the level of preliminary design, and the ownership status of impacted real property. See February 2015 Gannett Fleming Limited Site Investigation Report and May 2015 Gannett Fleming Hazardous Materials Assessment Report prepared for NJ Transit.

Settlement and in Section 7.4 of the Construction Agreement. Section 8.4 of the Construction Agreement provides that PSE&G's sole obligations for any "Non-PSEG Hazardous Materials" (as defined in the Construction Agreement) "shall be to properly characterize and dispose of any Non-PSE&G Hazardous Materials it generates to complete the Substation Project (as defined in the Construction Agreement) (e.g., excavation of soil and dewatering during construction of substation foundations)." These costs are considered "Project Costs" (as defined in the Construction Agreement). As provided in Section 8.4 of the Construction Agreement, if Non-PSE&G Hazardous Materials are discovered that are on, in, under or migrating from the Project Site that constitute a "Reportable Event" (as defined in the Construction Agreement), the liability and expense required to address such Reportable Event in accordance with applicable Law shall be the responsibility of NJ Transit and not the responsibility of ratepayers.

19. PSE&G shall be permitted to recover its prudently-incurred Project Cost investment of \$100 million, plus Allowance for Funds Used During Construction ("AFUDC"), in a base rate case proceeding occurring after the Project is placed into service. The AFUDC will be limited to PSE&G's actual investment in the Project and will initially be calculated using the same methodology used for current distribution assets consistent with the Company's AFUDC policy, and as permitted by Federal Energy Regulatory Commission ("FERC") Order 561, which includes compounding AFUDC on a semi-annual basis. PSE&G's investment may include all prudent and reasonable qualifying Project capital expenditures, including actual costs of engineering, design and construction, and property acquisition, including actual labor, materials, overhead, and capitalized AFUDC associated with the Project. PSE&G's Project Costs will be recorded, during construction, in an associated Construction Work In Progress ("CWIP") account or in a Plant in Service account upon the Project, or parts of the Project, being deemed used and useful. The Company will follow its current policies and practices with regard to capitalizing costs, including overheads. The AFUDC rate will reflect a cost of equity of 9.75% until PSE&G's next base rate case, after which the cost of equity used in the AFUDC calculation will be updated to reflect the cost of equity approved in PSE&G's most recent base rate case. PSE&G will incur its \$100 million investment in the Project coincident with its use of the financial contribution made by NJ Transit, based upon the proportionate share of PSE&G's and NJ Transit's responsibility for the costs of the Project. Attached to the Stipulation is an estimated cash flow showing the simultaneous spend of PSE&G's and NJ Transit's contributions to Project Costs.
20. PSE&G's portion of the Project Costs may be recovered in a PSE&G base rate case filed after PSE&G's base rate case scheduled to be filed no later November 1, 2017 ("2017 Base Case").⁵ If there is a clear likelihood that part or all of the Project shall be in-service by the end of six (6) months after the end of the test year in the base rate case after the 2017 Base Case ("Post 2017

⁵ Subsequent to the agreement reached amongst the Signatory Parties, the Board granted PSE&G a one (1) month extension to file its base rate case, by December 1, 2017. See I/M/O the Board's Review of the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program, BPU Docket Nos. EO13020155 & and GO13020156 (October 20, 2017).

Base Case”), then the prudently incurred costs for the portion of the Project that shall be in-service within six months shall be reflected in the rates established in the Post 2017 Base Case. If part or all of the Project shall be in service after the end of six months after the end of the test year in the Post 2017 Base Case, that case shall remain open to review prudence and reflect such costs in base rates at a later date. If the Post 2017 Base Case remains open for this purpose, upon the petition of PSE&G the signatories agree to support a reasonably timely resolution of that rate adjustment matter consistent with the time frames used in other infrastructure related rate adjustments (i.e., a Phase II Proceeding). If part or all of the Project is not in service one year after the end of the test year after the Post 2017 Base Case, those costs will be reviewed and may be recovered, if deemed prudent, in a subsequent base rate case.

21. PSE&G's investment in the Project, which shall be part of Energy Strong approved program dollars to be recovered in a base rate case, shall be recovered in distribution rates subject to the jurisdiction of the Board and if found by the Board to be prudently incurred. The Parties agree that prudence will be decided by the Board in one or more base rate cases and that all the Parties reserve their individual rights regarding the prudence issue until the base rate case where the recovery of the costs is sought. The revenue requirement associated with the New Substation shall be recovered through base rates from all customer rate classes. More specifically, for cost of service and rate design purposes, the revenue requirements associated with the \$100 million investment, as may be adjusted pursuant to the Stipulation, will be allocated in the initial base rate case to all rate classes based upon total targeted revenue and revenue changes for each rate class. The Parties agree that the Board has jurisdiction to approve and allocate PSE&G's prudently incurred Project Cost investment through PSE&G's electric distribution rates in subsequent base rate cases.
22. If prior to the in-service date, the Project is cancelled PSE&G may file a petition with the Board seeking approval to recover its prudently incurred investment costs incurred prior to project cancellation. In any such proceeding, Rate Counsel reserves its rights to advance any position it deems appropriate.
23. Because of the unique nature of the rail traction service to be provided by PSE&G at the New Substation, the PSE&G HTS Tariff shall be amended to include a special provision describing the service provided at the Substation. (See Special Provision Language to Be Added to High Tension Service (“HTS”) Tariff attached to the Stipulation). The revised tariff provides that service to NJ Transit at the New Substation will be metered at the 230 kV demarcation point and that NJ Transit will be billed for power delivered to the Substation at the 230 kV HTS tariff rate applicable to rail traction service as set forth in Public Service Electric & Gas Company Tariff B.P.U.N.J. No.15, Rate Schedule HTS, except for the power delivered to the 13 kV substation that is replacing the current 26 kV feed to Building 9. The 13 kV substation will be metered at the 13 kV demarcation point and NJ Transit will be billed for power delivered to this substation under the Large Power and Light Service at Primary Distribution Voltage (“LPL-P”) rate schedule. The special provision described above for the PSE&G HTS revised tariff is intended to apply to the metering configuration proposed for the New Substation.

24. PSE&G will be primarily responsible for the operations and maintenance of the New Substation. Prior to the in-service date of the New Substation, PSE&G and NJ Transit intend to enter into an operational protocols agreement, which will be provided to the Board, that specifically delineates the responsibilities and obligations of the parties' regarding operation, maintenance, and repair of the New Substation.
25. It is anticipated that NJ Transit's proposed micro-grid (i.e., NJ Transitgrid) will be interconnected to the New Substation. In order to make such interconnection, NJ Transit will be required to apply to and obtain interconnection approval from PJM.⁶ The Project design and Project Costs include line positions available for interconnection. The Project Costs do not include costs for interconnection to be determined by PJM. NJ Transit shall be responsible for the payment of such interconnection costs and PSE&G agrees that it will not seek recovery of such interconnection costs from ratepayers.
26. As discussed above, NJ Transit shall be responsible for making the NJ Transit Contribution. In certain circumstances, non-shareholder contributions to capital costs are required to be "grossed-up" to include federal income tax that is required to be paid by utilities receiving non-shareholder contributions to capital. PSE&G, in coordination with NJ Transit, has agreed to file a Private Letter Ruling ("PLR") request with the Internal Revenue Service ("IRS") seeking a determination that the NJ Transit Contribution for the Project is not subject to federal income tax. If the IRS declines to issue a responsive PLR, or if the IRS determines that the NJ Transit Contribution is subject to federal income tax, then PSE&G, NJ Transit and Rate Counsel shall engage in good-faith discussions to determine how any federal income tax liability will be paid. The Parties may agree to revisit the terms of the Stipulation following such good-faith discussions. Any increase in the amount of the Project costs to be recovered through distribution rates shall be subject to agreement by the Signatories to the Stipulation. Any dispute shall be resolved by the Board upon the filing of a petition by PSE&G in this docket. Until such a petition is addressed by the Board in a final, non-appealable order, or until the IRS issues a PLR finding that income tax is not applicable to the NJ Transit Contribution, NJ Transit shall be responsible for payment to PSE&G of the federal income tax gross-up.
27. Due to the unique circumstances in which the Mason Substation was damaged during Hurricane Sandy, utilizing Energy Strong program dollars to make the Mason Substation more resilient is appropriate. The Parties agree that the Stipulation of Settlement cannot be cited by the Parties as precedent and that Board approval would be required for PSE&G to obtain authority to own, reconstruct and operate a NJ TRANSIT owned substation. NJ Transit agrees that it will not seek contribution from PSE&G ratepayers for NJ Transit owned substation upgrades or modifications in any other future proceeding before the

⁶ PJM Interconnection, LLC ("PJM") is a regional transmission operator regulated by FERC that is responsible for the planning, operation, and reliability of the electrical system under its control, and is a system which includes all or parts of Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

Board unless consistent with N.J.A.C. 14:3-8 et seq. (BPU Main Extension Rules).

28. NJ Transit will retain or hire, at its sole discretion and expense, an Oversight Advisor to NJ Transit's Executive Management and its Board of Directors, who will provide to NJ Transit an ongoing review of the Project relating to progress of the Project and expenditures relative to the Project cost estimate.
29. The Parties agree that the Board shall have jurisdiction to resolve all disputes concerning Disputed Costs or adherence to the Project Schedule that impact Disputed Costs (as defined in the Construction Agreement). The Parties agree to submit all such disputes to Board Staff for informal resolution. If the dispute is not resolved through this informal resolution process within thirty (30) days, any Party may, at any time thereafter, file a formal complaint or petition with the Board regarding the dispute. It is understood that Rate Counsel is not a party to the Construction Agreement and as such is not subject to the Disputed Costs requirements set forth in the Construction Agreement.

DISCUSSION AND FINDINGS

In evaluating a proposed settlement, the Board must review the record, balance the interests of the ratepayers and the shareholders, and determine whether the settlement represents a reasonable disposition of the issues that will enable the Company to provide its customers in this State with safe, adequate and proper service at just and reasonable rates. In re Petition of Pub. Serv. Elec. & Gas, 304 N.J. Super. 247 (App. Div.), cert. denied, 152 N.J. 12 (1997). The Board recognizes that the 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. The New Substation will also support transmission grid resiliency and the microgrid application for NJ Transit.

Therefore, based on the Board's review and consideration of the record in this proceeding, the Board **HEREBY FINDS** the Stipulation to be reasonable, in the public interest and in accordance with the law. Accordingly, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein, subject to any terms and conditions set forth in this Order.


Any determination as to the prudence of the costs and expenses attributed to PSE&G through the Stipulation, including taxation gross up costs discussed in paragraph 26 of the Stipulation, as well as the inclusion of cost of construction, contributions in aid of construction, depreciation on contributed plant, the cost of connection, or any related capital improvements, and the allocation of such cost and expenses, shall be made in an appropriate subsequent rate proceeding as set forth in the Stipulation.

The Board **HEREBY RATIFIES** the decisions of Commissioner Fiordaliso rendered during the proceedings for the reasons stated in his Orders.

This Order shall be effective on December 1, 2017.

DATED: 11/21/17

BOARD OF PUBLIC UTILITIES
BY:

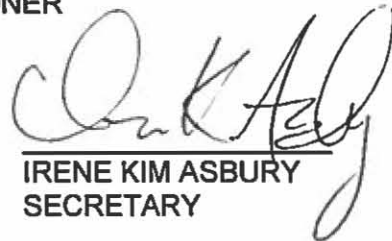

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

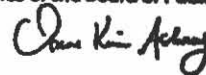

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
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 PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL OF THE CONSTRUCTION OF THE MASON SUBSTATION DAMAGED
DURING SUPERSTORM SANDY
DOCKET NO. EO16080788

SERVICE LIST

PSE&G

Joseph F. Accardo, Jr., Esq.
Deputy General Counsel
PSEG Services Corporation
80 Park Plaza-T5
Newark, NJ 07102
joseph.accardo@pseg.com

Matthew Weissman, Esq.
Associate General Regulatory Counsel
PSEG Services Corporation
80 Park Plaza-T5
Newark, NJ 07102
matthew.weissman@pseg.com

Hesser McBride, Esq.
Associate General Regulatory Counsel
PSEG Services Corporation
80 Park Plaza-T5
Newark, NJ 07102
hesser.mcbride@pseg.com

Michele Falcao
PSE&G
80 Park Plaza, T8C
Post Office Box 570
Newark, NJ 07102
michele.falcao@pseg.com

Board of Public Utilities

44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350

Paul Flanagan, Esq.
Executive Director
paul.flanagan@bpu.nj.gov

Thomas Walker, Director
Division of Energy
thomas.walker@bpu.nj.gov

Division of Rate Counsel

140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.nj.gov

Brian Lipman, Litigation Manager
blipman@rpa.nj.gov

Ami Morita, Esq.
amorita@rpa.nj.gov

James Glassen, Esq.
jglassen@rpa.nj.gov

Diane Schulze, Esq.
dschulze@rpa.nj.gov

Kurt Lewandowski, Esq.
klewando@rpa.nj.gov

Robert Fagan
Synapse Energy Economics, Inc.
485 Massachusetts Ave., Suite 2
Cambridge MA 02139
rfagan@synapse-energy.com

Andrea Crane
The Columbia Group, Inc.
2805 East Oakland Park Blvd., #401
Ft. Lauderdale, FL 33306
ctcolumbia@aol.com

Max Chang
Synapse Energy Economics, Inc.
485 Massachusetts Ave., Suite 2
Cambridge MA 02139
mchang@synapse-energy.com

Stacy Peterson, Deputy Director
Division of Energy
stacy.peterson@bpu.nj.gov

John Masiello
Division of Energy
john.masiello@bpu.nj.gov

Bethany Rocque-Romaine, Esq.
Counsel's Office
bethany.romaine@bpu.nj.gov

Megan Lupo, Esq.
Counsel's Office
megan.lupo@bpu.nj.gov

NJ Transit

Aziz O. Nekoukar, DAG
Division of Law
NJT & Univ. Hospital Section
One Penn Plaza East
Newark New Jersey 07105
anekoukar@njtransit.com

Megan J. Strickland
N.J. Transit
One Penn Plaza East
Newark NJ 07105
mjstrickland@njtransit.com

Jessica Goldstein
N.J. Transit
One Penn Plaza East
Newark NJ 07105
jgoldstein@njtransit.com

Greg Eisenstark, Esq.
Windels Marx
120 Albany Street Plaza
6th Floor
New Brunswick, NJ 08901
geisenstark@windelsmarx.com

Charles Salamone
Cape Power System Consulting,
Inc.
630 Cumberland Drive
Flagler Beach FL 32136
csalamone@capepowersystems.com

Department of Law and Public Safety

124 Halsey Street
Post Office Box 45029
Newark, NJ 07101

Alex Moreau, Esq.
Alex.Moreau@law.nj.oag.gov

Geoffrey Gersten, Esq.
Geoffrey.Gersten@law.nj.oag.gov

Emma Xiao, Esq.
Emma.Xiao@law.nj.oag.gov

NJLEUC

Steven S. Goldenberg, Esq.
Fox Rothschild, LLP
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648
sgoldenberg@foxrothschild.com

Paul F. Forshay, Esq.
Sutherland, Asbill & Brennan, LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20004
paul.forshay@Sutherland.com

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**In the Matter of the Petition of Public Service
Electric and Gas Company for Approval of
the Construction of the Mason Substation
Damaged During Superstorm Sandy**

**STIPULATION AND SETTLEMENT
AGREEMENT
BPU DOCKET NO.
EO16080788**

APPEARANCES:

Matthew M. Weissman, Esq., General Regulatory Counsel-Rates and **Hesser G. McBride Jr., Esq.**, Associate General Regulatory Counsel, for the Petitioner, Public Service Electric and Gas Company

Aziz O. Nekoukar, Esq., Deputy Attorney General, and **Gregory Eisenstark, Esq.**, Windels Marx Lane & Mittendorf, LLP, on behalf of New Jersey Transit Corp.

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel, **Brian Lipman, Esq.**, Litigation Manager, **Ami Morita, Esq.**, Managing Attorney - Electric, **Kurt S. Lewandowski, Esq.**, Assistant Deputy Rate Counsel, **Diane Schulze, Esq.**, Assistant Deputy Rate Counsel, **James Glassen, Esq.**, Assistant Deputy Rate Counsel.

Alex Moreau, Emma Yao Xiao, and Patricia Krogman, Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities.

Steven S. Goldenberg, Esq., Fox Rothschild, LLP, for New Jersey Large Energy Users Coalition.

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

It is hereby AGREED, as of the 9th day of November, 2017, by and between Public Service Electric and Gas Company ("Public Service," "PSE&G" or the "Company"); the Staff of the New Jersey Board of Public Utilities ("Board Staff"); the New Jersey Division of Rate Counsel ("Rate Counsel"); New Jersey Transit Corporation ("NJ TRANSIT"); and the New Jersey Large Energy Users Coalition ("NJLEUC"), the undersigned parties and participants

(hereinafter referred to as “the Signatories” or “the Parties”) to execute this Stipulation and Settlement Agreement resolving PSE&G’s Petition for Approval of the Construction, ownership and operation of the Mason Substation damaged during Superstorm Sandy.

The Signatories do hereby join in recommending that the Board of Public Utilities (“Board”) issue a Final Decision and Order approving and adopting the terms of this Stipulation and Settlement Agreement.

BACKGROUND

1. On October 29, 2012, Superstorm Sandy’s storm surge substantially damaged the Mason electrical substation and the adjacent Building 9 electrical substation located in Kearny, New Jersey and owned by NJ TRANSIT (collectively “the Existing Substation” or “Mason Substation.”). The initial storm surge, estimated to be as high as seven feet, inundated the Existing Substation. The equipment, wiring, raceways, and structures were submerged in contaminated salt water for an extended period of time at elevations of four to five feet. Pressurized surge waters also penetrated the control building and equipment cabinets through underground conduits, causing damage to devices located above the flood elevation. NJ TRANSIT has effectuated interim repairs that have enabled the Mason Substation to remain operational in a limited capacity.

2. On May 21, 2014, the Board issued an order approving a settlement of PSE&G’s Energy Strong program (“Energy Strong”), a comprehensive investment program to harden the Company’s electric and gas infrastructure to make it less susceptible to damage from wind, flying debris and

water damage in anticipation of major storm events.¹ The Energy Strong program, which was initiated by a 2013 petition filed by PSE&G, includes several subprograms, including an Electric Station Flood Mitigation subprogram designed to implement flood mitigation for specifically identified electric substations that experienced water intrusion during Superstorm Sandy, Hurricane Irene, or other recent water intrusion events. The Board approved the \$1 billion Energy Strong budget of which \$400 million was allocated to the electric station flood mitigation program to be recovered through the ESAM clause mechanism. The Board also approved an additional \$220 million budget for electric station flood mitigation to be recoverable through a base rate case. See Paragraph 23, Energy Strong Stipulation attached to the Energy Strong Order.

3. Consistent with the petition filed by PSE&G in the Energy Strong proceeding, on August 15, 2016, PSE&G petitioned the Board in the above-captioned BPU Docket (Docket No. EO16080788) requesting various Board approvals in connection with a proposal for PSE&G to own, re-construct and enhance the resiliency of the Mason Substation (“Petition”). The proposal to reconstruct the Mason Substation (*i.e.*, the “Project” or the “New Substation”) is similar to the substation resiliency projects included in the Energy Strong Electric Station Flood Mitigation subprogram.

4. The Existing Substation is currently configured as a 230 kV substation containing a single 230 kV high-side bus-tie circuit breaker that splits the 230 kV PSE&G transmission line

¹ *In the Matter of the Petition of Public Service Electric and Gas Company for Approval of the Energy Strong Program*, Docket Nos. EO13020155 and GO13020156, Order Approving Stipulation of Settlement, ((NJ B.P.U., May 21, 2014) (the “Energy Strong Order”)).

that terminates at the PSE&G Athenia and Essex substations. Any failure at the Existing Substation would reduce the availability of power to PSE&G's Athenia and Essex substations, and result in PSE&G's Cook Road and Kingsland substations being deprived of an alternate source of power. The Mason Substation is currently owned by NJ TRANSIT and under PSE&G's tariff the high side bus of the substation is considered part of the Public Service distribution system for operational purposes. PSE&G Response to S-PS-0001 (quoting *PSE&G Electric Service Tariff*, Section 5.1, Service Connections, General).

5. The Existing Substation is critical to the reliability of rail transportation service in Northern New Jersey. The Existing Substation is the source of traction power for a 14.5 mile segment of NJ TRANSIT's Morris & Essex Lines between Maplewood and Hoboken, including critical connection points for travel into and out of New York City. NJ TRANSIT and PSE&G assert that it provides traction power for approximately 74,200 weekday passenger trips and supports either a large portion, or all, of the power necessary to facilitate approximately 5,000,000 annual passenger boardings. In addition, NJ TRANSIT and PSE&G also assert that the Existing Substation provides electric service to NJ TRANSIT's Meadows Maintenance Complex (MMC), which is NJ TRANSIT's major maintenance facility servicing its entire fleet, and NJ TRANSIT Rail Operations Center ("ROC"), which is the central command and control facility for all train movements statewide, including train control, signal and power dispatching operations. See Petition at Pars. 11-12.

6. NJ TRANSIT claims that the New Substation will serve a critical role in the operation of NJ TRANSIT's nationally-recognized project, NJ TRANSITGRID, a proposed micro-grid system that

will provide reliable back-up power to support a core segment of NJ TRANSIT's transportation service in Northern New Jersey and the Hudson River crossings in the event of an electrical system failure resulting in the interruption of electric delivery service to NJ TRANSIT.

7. In addition to providing enhanced redundancy to the PSE&G system, the New Substation will increase system resiliency because it is being designed to keep all critical infrastructure above the 500 year flood elevation at the site. During future storms, the potential for service interruptions to rail service due to flooding will be greatly reduced resulting in more reliable service. This project is designed to avoid the multiple-day loss of rail service experienced during Superstorm Sandy.

8. In the Petition, the Company sought approval of the Board for the Company to construct, own and primarily operate the New Substation. The Petition proposed that the costs of the Project be recovered through distribution rates using a mechanism similar to that adopted in the Energy Strong proceeding. Further, the Petition requested that the Board approve a revision to PSE&G's High Tension Service ("HTS") tariff to include a provision that describes the service to be provided to NJ TRANSIT via the New Substation.

9. On November 18, 2016, the Company filed the direct testimony of Jorge Cardenas and Stephen Swetz in support of the Petition. In its testimony, PSE&G explained that the proposed New Substation is designed to continue to be served by the existing 230 kV facilities but would include a 230kV breaker-and-a-half design gas-insulated switchgear ("GIS") switching station comprised of six (6) bays. After extensive discussion with the Parties, the design of the proposed station was reduced to include four (4) bays with three (3) breakers and two (2) line positions per bay, totaling twelve (12) breakers and eight (8) line positions of GIS equipment as well as a

protective GIS hall building, control room, station light and power transformers, and a backup generator for station light and power. See PSE&G Revised Responses to RCR-ENG-0001, RCR-ENG-0035, RCR-ENG-0053, and RCR-ENG-0058.

10. On September 23, 2016, the Board issued an Order designating Commissioner Joseph L. Fiordaliso as the presiding officer in the matter to rule on all motions that arise during the pendency of the proceeding, establish and modify any schedules that may be set as necessary, and conduct public and evidentiary hearings. On December 15, 2016, NJ TRANSIT and NJLEUC were granted intervention status in the proceeding.

11. Public hearings were held in both the afternoon and the evening on January 10, 2017, at Burlington County Administration Building, Mount Holly; January 12, 2017, at Middlesex County Administration Building, New Brunswick; and January 13, 2017, at Bergen County Administration Building, Hackensack.

12. On May 1, 2017, Rate Counsel submitted the pre-filed testimony of witnesses Robert Fagan and Andrea Crane.

13. Over the course of the past year, discovery has been issued and responded to pursuant to a procedural schedule issued and modified thereafter by Commissioner Fiordaliso. (See PSE&G Discovery Responses to Rate Counsel Requests RCR-A-1 – RCR-A-45, RCR-ENG-1 – RCR-ENG -77, RCR-INF-PS-1 – RCR-INF-PS-16; PSE&G Discovery Responses to BPU Staff Requests S-PS-1 – S-PS-11; NJ TRANSIT Discovery Responses to Rate Counsel Requests RCR-A-1 - RCR-A-22, RCR-ET-1 - RCR-ET-32, RCR-AT-1 - RCR-AT-25, RCR-INF-NJT-1 – RCR-INF-NJT-12; Rate Counsel Discovery Responses to NJ TRANSIT Requests NJT-RC-1 - NJT-RC-12; Rate Counsel Discovery Responses to PSE&G Requests PSEG-RD-1 - PSEG-RD-9, PSEG-ENG-1 - PSEG-ENG-38)

14. Additionally, during this time period, the Parties met on several occasions in discovery/technical conferences in order to facilitate information gathering and to discuss opportunities for settlement.

15. Based upon the information exchanged by the Parties and the settlement conferences referred to above, and recognizing the unique circumstances of this program, the Parties have reached an agreement on a settlement resolving all issues in the instant proceeding as set forth herein.

STIPULATED MATTERS

In light of the foregoing, the Signatories have agreed to submit this Stipulation and Settlement Agreement to the Board for approval, the terms of which are set forth below. Specifically, the Signatories hereby STIPULATE AND AGREE to the following:

16. PSE&G shall be permitted by the Board to demolish the Existing Substation and reconstruct, own and operate the New Substation as set forth in this Stipulation of Settlement and attachments. The New Substation will be a PSE&G owned asset that is part of PSE&G's electrical system used to provide utility service to NJ TRANSIT. The Mason Substation reconstruction project will be performed by PSE&G subject to the Board's jurisdiction and under the standards applicable to public utility construction projects, and pursuant to the terms and conditions of the attached Construction Coordination and Protocol Agreement ("Construction Agreement").

17. Based upon the revised system design discussed above, the Company's cost estimate for the Project is a base cost of \$206 million. The base cost estimate does not include Risk & Contingency ("R&C"). Although NJ TRANSIT and PSE&G agree on the estimate of the Project's base cost of \$206 million, they each use a different R&C amount in estimating the total cost estimate for the Project ("Estimated Project Cost").² PSE&G's Estimated Project Cost is based upon information known by PSE&G at this time and only includes R&C for such known costs.

18. The Estimated Project Cost includes reimbursement to NJ TRANSIT for various reasonable costs NJ TRANSIT has incurred, and is expected to incur, in connection with the

² PSE&G proposes a R&C level of \$38M based upon information known to it regarding the current proposed design; the proposed location (revised from the specific location proposed originally), and its Monte Carlo Simulation Risk Analysis at a 90% Confidence Level assumption, which would result in a total estimated Project cost of \$244 million. NJ TRANSIT proposes a \$26M Risk and Contingency level based on a 10% confidence assumption, which would result in a total estimated Project cost of \$232 million. NJ TRANSIT does not concur with PSE&G's assumption, given the subsurface investigation performed to date, environmental due diligence (including testing) performed on property adjacent to the site area, the level of preliminary design, and the ownership status of impacted real property. See February 2015 Gannett Fleming Limited Site Investigation Report and May 2015 Gannett Fleming Hazardous Materials Assessment Report prepared for NJ TRANSIT.

Project. NJ TRANSIT's reimbursable costs include the following categories: NJ TRANSIT Project Management; Design Work and Design Review; Constructability Review; Procurement Support; Construction Assistance; Force Account; Flagging; and Contingency and Escalation on these future costs ("Ancillary Costs"). The Project Cost Estimate includes a reimbursement amount for non-disputed Ancillary Costs limited to \$15.6 Million. (See PSE&G Revised Response to RCR-ENG-0058 and Schedule J of attached Construction Agreement). The Estimated Project Cost does not include costs for the property easement access rights from NJ TRANSIT that are required for the Project, which costs are estimated to not exceed \$75,000.00. Costs that PSE&G incurs to acquire property rights required for the Project will be included in the Project Costs and shall not exceed fair market value.

The costs to replace the Mason Substation ("Project Costs") shall be funded by a combination of investment by PSE&G and by a non-shareholder capital contribution to be made by NJ TRANSIT to PSE&G ("NJ TRANSIT Contribution") in an amount estimated by NJ TRANSIT at \$132 million. The amount of the NJ TRANSIT Contribution may change as described in Paragraph 26 of this Stipulation and Settlement Agreement. The costs to be incurred by PSE&G for the Project shall be limited to \$100 million (except as described in Paragraphs 19 and 26 of this Stipulation and Settlement Agreement, and in Section 7.4 of the Construction Agreement), and are to be recovered in a base rate case proceeding as set forth hereafter in this Stipulation and Settlement Agreement. Notwithstanding the foregoing, investment by PSE&G recoverable from distribution ratepayers will not exceed \$100 million except as provided in Paragraphs 19 and 26 of this Stipulation of Settlement. Due to the unique circumstances of the damage caused by Hurricane Sandy, the \$100 million investment by

PSE&G shall be part of the \$1.22 billion of investment authorized by the Board in connection with its approval of the Energy Strong Program. NJ TRANSIT shall be responsible for the payments of all the Project Costs in excess of \$100 Million except as described in Paragraphs 19 and 26 of this Stipulation and Settlement and in Section 7.4 of the Construction Agreement. Section 8.4 of the Construction Agreement provides that PSE&G's sole obligations for any "Non-PSEG Hazardous Materials" (as defined in the Construction Agreement) "shall be to properly characterize and dispose of any Non-PSE&G Hazardous Materials it generates to complete the Substation Project (as defined in the Construction Agreement)(e.g., excavation of soil and dewatering during construction of substation foundations)." These costs are considered "Project Costs" (as defined in the Construction Agreement). As provided in Section 8.4 of the Construction Agreement, if Non-PSE&G Hazardous Materials are discovered that are on, in, under or migrating from the Project Site that constitute a "Reportable Event" (as defined in the Construction Agreement), the liability and expense required to address such Reportable Event in accordance with applicable Law shall be the responsibility of NJ TRANSIT and not the responsibility of Ratepayers.

19. PSE&G shall be permitted to recover its prudently-incurred Project Cost investment of \$100 million, plus Allowance for Funds Used During Construction ("AFUDC"), in a base rate case proceeding occurring after the Project is placed into service. The AFUDC will be limited to PSE&G's actual investment in the Project and will initially be calculated using the same methodology used for current distribution assets consistent with the Company's AFUDC policy, and as permitted by FERC Order 561, which includes compounding AFUDC on a semi-annual basis. PSE&G's investment may include all prudent and reasonable qualifying Project capital

expenditures, including actual costs of engineering, design and construction, and property acquisition, including actual labor, materials, overhead, and capitalized AFUDC associated with the Project. PSE&G's Project Costs will be recorded, during construction, in an associated Construction Work In Progress ("CWIP") account or in a Plant in Service account upon the Project, or parts of the Project, being deemed used and useful. The Company will follow its current policies and practices with regard to capitalizing costs, including overheads. The AFUDC rate will reflect a cost of equity of 9.75% until PSE&G's next base rate case, after which the cost of equity used in the AFUDC calculation will be updated to reflect the cost of equity approved in PSE&G's most recent base rate case. PSE&G will incur its \$100 million investment in the Project coincident with its use of the financial contribution made by NJ TRANSIT, based upon the proportionate share of PSE&G's and NJ TRANSIT's responsibility for the costs of the project. Attached to this Stipulation is an estimated cash flow showing the simultaneous spend of PSE&G's and NJ TRANSIT's contributions to project costs.

20. PSE&G's portion of the Project Costs may be recovered in a PSE&G base rate case filed after PSE&G's base rate case scheduled to be filed no later November 1, 2017 ("2017 Base Case"). If there is a clear likelihood that part or all of the Project shall be in-service by the end of six months after the end of the test year in the base rate case after the 2017 Base Case ("Post 2017 Base Case"), then the prudently incurred costs for the portion of the Project that shall be in-service within six months shall be reflected in the rates established in the Post 2017 Base Case. If part or all of the Project shall be in service after the end of six months after the end of the test year in the Post 2017 Base Case, that case shall remain open to review prudence and reflect such costs in base rates at a later date. If the Post 2017 Base Case remains open for this purpose, upon

the petition of PSE&G the Signatories agree to support a reasonably timely resolution of that rate adjustment matter consistent with the time frames used in other infrastructure related rate adjustments (i.e., a Phase II Proceeding). If part or all of the Project is not in service one year after the end of the test year after the Post 2017 Base Case, those costs will be reviewed and may be recovered, if deemed prudent, in a subsequent base rate case.

21. PSE&G's investment in the Project, which shall be part of Energy Strong approved program dollars to be recovered in a base rate case, shall be recovered in distribution rates subject to the jurisdiction of the Board and if found by the Board to be prudently incurred. The Parties agree that prudence will be decided by the Board in one or more base rate cases and that all the Parties reserve their individual rights regarding the prudence issue until the base rate case where the recovery of the costs is sought. The revenue requirement associated with the New Substation shall be recovered through base rates from all customer rate classes. More specifically, for cost of service and rate design proposes, the revenue requirements associated with the \$100 Million investment, as may be adjusted pursuant to this Stipulation and Settlement Agreement, will be allocated in the initial base rate case to all rate classes based upon total targeted revenue and revenue changes for each rate class. The Parties agree that the Board has jurisdiction to approve and allocate PSE&G's prudently incurred Project Cost investment through PSE&G's electric distribution rates in subsequent base rate cases.

22. If prior to the in-service date, the Project is cancelled PSE&G may file a petition with the Board seeking approval to recover its prudently incurred investment costs incurred prior to project cancellation. In any such proceeding, Rate Counsel reserves its rights to advance any position it deems appropriate.

23. Because of the unique nature of the rail traction service to be provided by PSE&G at the New Substation, the PSE&G HTS Tariff shall be amended to include a special provision describing the service provided at the Substation. (See attached Special Provision Language to Be Added To High Tension Service (HTS) Tariff. The revised tariff provides that service to NJ TRANSIT at the New Substation will be metered at the 230 kV demarcation point and that NJ TRANSIT will be billed for power delivered to the Substation at the 230 kV HTS tariff rate applicable to rail traction service as set forth in *Public Service Electric & Gas Company Tariff B.P.U.N.J. No.15*, Rate Schedule HTS, except for the power delivered to the 13kV substation that is replacing the current 26kV feed to Building 9. The 13kV substation will be metered at the 13kV demarcation point and NJ TRANSIT will be billed for power delivered to this substation under the Large Power and Light Service at Primary Distribution Voltage (LPL-P) rate schedule. The special provision described above for the PSE&G HTS revised tariff is intended to apply to the metering configuration proposed for the New Substation.

24. PSE&G will be primarily responsible for the operations and maintenance of the New Substation. Prior to the in-service date of the New Substation, PSE&G and NJ TRANSIT intend to enter into an operational protocols agreement, which will be provided to the Board, that specifically delineates the responsibilities and obligations of the parties' regarding operation, maintenance, and repair of the New Substation.

25. It is anticipated that NJ TRANSIT's proposed micro-grid (i.e., NJ TRANSITGRID) will be interconnected to the New Substation. In order to make such interconnection, NJ TRANSIT will be required to apply to and obtain interconnection approval from PJM. The Project design and Project Costs include line positions available for interconnection. The Project Costs do not

include costs for interconnection to be determined by PJM. NJ TRANSIT shall be responsible for the payment of such interconnection costs and PSE&G agrees that it will not seek recovery of such interconnection costs from ratepayers.

26. As discussed above, NJ TRANSIT shall be responsible for making the NJ TRANSIT Contribution. In certain circumstances, non-shareholder contributions to capital costs are required to be “grossed –up” to include federal income tax that is required to be paid by utilities receiving non-shareholder contributions to capital. PSE&G, in coordination with NJ TRANSIT, has agreed to file a Private Letter Ruling (“PLR”) request with the Internal Revenue Service (“IRS”) seeking a determination that the NJ TRANSIT Contribution for the Project is not subject to federal income tax. If the IRS declines to issue a responsive PLR, or if the IRS determines that the NJ TRANSIT Contribution is subject to federal income tax, then PSE&G, NJ TRANSIT and Rate Counsel shall engage in good-faith discussions to determine how any federal income tax liability will be paid. The Parties may agree to revisit the terms of the Stipulation following such good-faith discussions. Any increase in the amount of the Project costs to be recovered through distribution rates shall be subject to agreement by the Signatories to the Stipulation. Any dispute shall be resolved by the Board upon the filing of a petition by PSE&G in this docket. Until such a petition is addressed by the Board in a final, non-appealable order, or until the IRS issues a PLR finding that income tax is not applicable to the NJ TRANSIT Contribution, NJ TRANSIT shall be responsible for payment to PSE&G of the federal income tax gross-up.

27. Due to the unique circumstances in which the Mason Substation was damaged during Hurricane Sandy, utilizing Energy Strong program dollars to make the Mason Substation more resilient is appropriate. The Parties agree that this Stipulation of Settlement cannot be cited by the Parties as precedent and that Board approval would be required for PSE&G to obtain authority to own, reconstruct and operate a NJ TRANSIT owned substation. NJ TRANSIT agrees that it will not seek contribution from PSE&G ratepayers for NJ TRANSIT owned substation upgrades or modifications in any other future proceeding before the Board unless consistent with N.J.A.C. 14:3-8 et. seq. (BPU Main Extension Rules).

28. NJ TRANSIT will retain or hire, at its sole discretion and expense, an Oversight Advisor to NJ TRANSIT's Executive Management and its Board of Directors, who will provide to NJ TRANSIT an ongoing review of the Project relating to progress of the Project and expenditures relative to the Project cost estimate.

29. The Parties agree that the Board shall have jurisdiction to resolve all disputes concerning Disputed Costs or adherence to the Project Schedule that impact Disputed Costs (as defined in the Construction Agreement). The Parties agree to submit all such disputes to Board Staff for informal resolution. If the dispute is not resolved through this informal resolution process within 30 days, any Party may, at any time thereafter, file a formal complaint or petition with the Board regarding the dispute. It is understood that Rate Counsel is not a party to the Construction Agreement and as such is not subject to the Disputed Costs requirements set forth in the Construction Agreement.

30. This Stipulation and Settlement Agreement represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation and Settlement Agreement is not adopted in its entirety by the Board, in any applicable Order(s), then any Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation and Settlement Agreement as though this Stipulation and Settlement Agreement had not been signed.

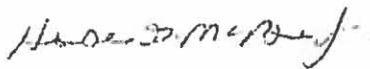
31. It is the intent of the Signatories that the provisions herein be approved by the Board as being in the public interest. The Signatories further agree that they consider the Stipulation and Settlement Agreement to be binding on them for all purposes herein.

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

33. The Signatories further acknowledge that a Board Order approving this Stipulation and Settlement Agreement will become effective upon the service of said Board Order, or upon such date after the service thereof as the Board may specify, in accordance with N.J.S.A. 48:2-40.


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

**PUBLIC SERVICE ELECTRIC
AND GAS COMPANY**

BY: 
Hesser G. McBride, Jr.
Associate General Regulatory Counsel

DATED: _____

**NEW JERSEY DIVISION OF RATE
COUNSEL**

BY: 
Stefanie A. Brand
Director

DATED: 11/9/17

**ATTORNEY GENERAL OF NEW JERSEY
for the Staff of the Board of Public Utilities**

BY: _____
Deputy Attorney General


DATED: _____

**NEW JERSEY LARGE ENERGY USERS
COALITION (NJLEUC)**

BY: _____
Stephen S. Goldenberg, Esq.
Fox Rothschild, LLP

DATED: _____

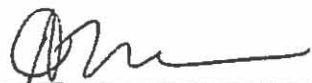
**NEW JERSEY TRANSIT
CORPORATION**

BY: 
Steven H. Santoro
Executive Director

DATED: 10/20/17

This has been approved as to form
on behalf of NJ TRANSIT by:

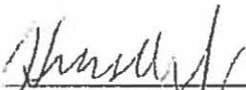
**CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW
JERSEY**

BY: 
Aziz O. Nekoukar
Deputy Attorney General

DATED: 10/20/2017

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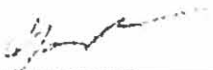
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BY: 
Hesser G. McBride, Jr.
Associate General Regulatory Counsel
DATED: October 20, 2017

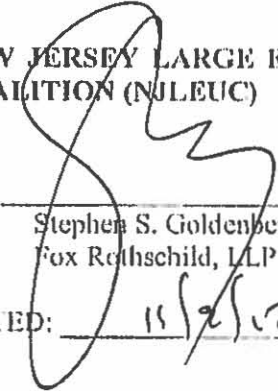
NEW JERSEY DIVISION OF RATE COUNSEL

BY: _____
Stefanie A. Brand
Director
DATED: _____

**CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
for the Staff of the Board of Public Utilities**

BY: 
Emma Yao Xiao
Deputy Attorney General
DATED: November 9, 2017

NEW JERSEY LARGE ENERGY USERS COALITION (NLEUC)

BY: 
Stephen S. Goldenberg, Esq.
Fox Rothschild, LLP
DATED: 11/25/17

NEW JERSEY TRANSIT CORPORATION

BY: _____
Steven H. Santoro
Executive Director
DATED: _____

This has been approved as to form on behalf of NJ TRANSIT by:

**CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY**

BY: _____
Aziz O. Nekoukar
Deputy Attorney General
DATED: _____

ATTACHMENTS TO STIPULATION OF SETTLEMENT

Construction Coordination and Protocol Agreement Between Public Service Electric and Gas Company and New Jersey Transit Corporation, including Schedules A – K.

Estimated Project Cash flow

Special Provision Language to Be Added To High Tension Service (HTS) Tariff

CONSTRUCTION COORDINATION AND PROTOCOL AGREEMENT

Between

Public Service Electric and Gas Company

And

New Jersey Transit Corporation

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Schedule A	Substation Project Description
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Schedule C	Project Site
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Schedule J	Estimated Project Budget
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CONSTRUCTION COORDINATION AND PROTOCOL AGREEMENT

Between

Public Service Electric and Gas Company

And

New Jersey Transit Corporation

This Construction Coordination and Protocol Agreement, including the Schedules, Exhibits and Appendices attached hereto and incorporated herein (collectively, the "Agreement") is made and entered into as of November 6, 2017 (the "Effective Date") by and between Public Service Electric and Gas Company, a New Jersey corporation ("PSE&G") and New Jersey Transit Corporation, a body corporate and politic of the State of New Jersey ("NJ TRANSIT"). PSE&G and NJ TRANSIT are each referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, PSE&G has filed a petition with the New Jersey Board of Public Utilities ("NJBPU") seeking approval of the construction of a new PSE&G electric substation, which shall replace the Mason and Building 9 substations located in Kearny, New Jersey (collectively the "Existing Substation"), as this project is preliminarily described in further detail in Schedule A to this Agreement ("Substation Project");

WHEREAS, the Parties concurrent with execution of this Agreement will file a proposed stipulation and settlement agreement with the NJBPU seeking the NJBPU's approval of the terms reached by the Parties (among others) with respect to the Substation Project (the "Stipulation");

WHEREAS, following the satisfaction of the conditions subsequent set forth in Article 2 of this Agreement, PSE&G shall commence the Substation Project in accordance with the provisions of PSE&G's Tariff, the Stipulation and the terms of this Agreement;

WHEREAS, PSE&G shall own the Substation Project in its entirety and shall provide NJ TRANSIT High Tension Service through the Substation Project as a high tension service customer under PSE&G's Tariff;

WHEREAS, NJ TRANSIT intends to construct a surface parking facility and related improvements as described in Schedule B to this Agreement (the "Parking Project"), which may impact construction of the Substation Project. The Parking Project will generally be located on the Parking Project site described in Schedule D to this Agreement and will be more particularly delineated during the development of the Parking Project, as mutually agreed upon by the Parties (the "Parking Project Site");

WHEREAS, the Parties recognize that the rail and electrical distribution operations occurring at the Meadows Maintenance Complex (“MMC”) which is NJ TRANSIT’s major maintenance facility serving NJ TRANSIT’s entire fleet of rolling stock and the NJ TRANSIT Rail Operations Center (“ROC”), which is the central command and control facility for all train movements statewide, including train control signal and power dispatching operations (the MMC and the ROC are referred to herein collectively as the “Rail Operations Facilities”), and that ensuring the continuity of Rail Operations Facilities will, at all times, take precedence over the construction of the Substation Project;

WHEREAS, the Parties acknowledge that the timely completion of the Substation Project is important to NJ TRANSIT’s system reliability;

WHEREAS, the Parties recognize that PSE&G is constructing the Substation Project as a public utility and not as a construction contractor and as a public utility PSE&G is statutorily required to provide safe, adequate and reliable service to customers, and the satisfaction of such service obligations will, at all times, take precedence over the construction of the Substation Project; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions governing the construction of the Substation Project and the coordination of the Substation Project with the Parking Project as well as the Parties’ respective business operations all as more particularly described herein.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged by each Party, the Parties mutually covenant and agree as follows:

AGREEMENT

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** Each capitalized term that is not defined in Appendix I or in the text of this Agreement shall have the definition ascribed to that term in the Stipulation, unless specifically stated otherwise in this Agreement.

1.2 **Recitals.** The Parties agree that the recitals set forth above are true and correct and are incorporated into the terms of this Agreement.

1.3 **Relationship to Stipulation.**

This Agreement is the “Construction Protocol Agreement” that is described and referenced, among other places, in Paragraph 16 of the Stipulation. Execution of this Agreement by PSE&G and NJ TRANSIT satisfies the obligations of the Parties with respect to the

execution and delivery of the "Construction Protocol Agreement" contemplated by the Stipulation.

ARTICLE II

EFFECTIVE DATE; CONDITIONS SUBSEQUENT; TERM

2.1 Effective Date; Conditions Subsequent.

2.1.1 This Agreement and the rights and obligations of each Party hereunder shall become effective on the Effective Date; provided, however, the continued effectiveness of this Agreement shall be subject to the satisfaction (or waiver in writing by the Party entitled to the benefit of such condition) of each of the following conditions subsequent:

(a) The NJBPU's issuance of a final, non-appealable order approving the Stipulation in form and substance acceptable to PSE&G and NJ TRANSIT;

(b) The execution by the Parties of (1) a Substation Easement Agreement; and (2) a Parking Project Easement Agreement, which contain mutually acceptable terms and conditions, including those necessary for PSE&G's construction, ownership, operation and maintenance of the Substation Project and in the case of the above-referenced easement agreements, indemnification for third party claims and environmental investigation and remediation costs arising out of the preexisting environmental condition of the subject properties; and

(c) NJ TRANSIT's payment of the Advance Payment to PSE&G within ten (10) Days following satisfaction of the condition precedent set forth in Section 2.1.1(a).

2.1.2 With respect to the first condition subsequent set forth in Section 2.1.1(a) above, within three (3) Business Days following the date on which the NJBPU's order regarding the Stipulation becomes final and non-appealable, each Party shall provide Written Notice to the other stating whether this condition subsequent is satisfied. If either Party notifies the other that this condition subsequent is not satisfied, then this Agreement shall terminate effective on the date on which such Written Notice is given.

2.1.3 NJ TRANSIT agrees and acknowledges that PSE&G shall not be obligated to commence Work on the Substation Project (except as provided in Section 2.1.4) or incur any additional costs or expenses with respect to the Project until all of the conditions subsequent set forth above have been satisfied and/or waived by Written Notice. PSE&G shall adjust the Project Schedule as necessary to reflect the actual date on which the conditions subsequent set forth above have been satisfied and/or waived by Written Notice.

2.1.4 With respect to the second condition subsequent set forth in Section 2.1.1(b) above, following the satisfaction of the conditions subsequent contained in Sections 2.1.1(a) and 2.1.1(c), the Parties will commence the design and engineering of the Substation

Project; provided, however, that the Parties further agree that the physical construction of the Substation Project will not commence unless and until the conditions subsequent in this Section 2.1 are all satisfied or waived as provided herein, including the condition subsequent in Section 2.1.1(b). In the event that the conditions subsequent in this Section 2.1 are not satisfied or waived as provided herein, NJ TRANSIT shall be responsible for all the design and engineering costs incurred by PSE&G after the Effective Date and PSE&G shall have the right to deduct such costs from amounts held in the Operating Account.

2.2 **Term.** This Agreement is effective as of the Effective Date and shall terminate (unless terminated pursuant to this Agreement) on the date on which PSE&G gives Written Notice to NJ TRANSIT that the Substation Project is complete. For purposes hereof, the period between the Effective Date and the termination date shall constitute the "Construction Period."

ARTICLE III

PROJECT DESCRIPTION, STANDARDS, JOINT DEVELOPMENT TEAM AND GENERAL CONDITIONS

3.1 **Project Description.** A description of the Substation Project is attached hereto as Schedule A.

3.2 **Standard of Performance.** It is understood and agreed that each Party shall use Reasonable Efforts in performing its respective obligations as provided for in this Agreement.

3.3 **Purpose and Intent of Joint Development Team.** The Parties acknowledge that the mutual presence and simultaneous operation of the Rail Operations Facilities, performance of the work required to effectuate the Substation Project and the Parking Project within proximity to the Rail Operations Facilities, and PSE&G's utility service obligations present complicated operational issues that will require substantial initial and ongoing effort by the Parties to successfully manage. For this reason and to share responsibility for the coordination, efficiency and cost effectiveness in executing the Substation Project, to facilitate coordination of the Substation Project and Parking Project, and to ensure that NJ TRANSIT's Rail Operations Facilities and PSE&G's utility service obligations are not adversely affected, the Parties have formed the Joint Substation Project Development Team ("Joint Development Team"). Each Party's Designated Representatives on the Joint Development Team will have the authority to act on behalf of each respective Party.

3.4 **Joint Development Team.** Each Party shall appoint qualified in-house personnel and/or contractors or consultants to serve as members of the Joint Development Team. Appointees of the Joint Development Team are identified in Schedule E and may be changed upon Written Notice.

3.5 **Joint Development Team Access to Substation Project Records and Meetings.** All members of the Joint Development Team and each Parties' Designated

Representatives, including NJ TRANSIT's Construction Representatives and NJ TRANSIT's Substation Project Oversight Advisor (as defined below), will have the right to attend all Joint Development Team meetings regarding the Substation Project and have access to the documents and records concerning the Substation Project as required by the PSE&G Management Procedures or as determined to be necessary by the Joint Development Team and such other document as may be requested by NJ TRANSIT pursuant to its processes and procedures, which may include, but not be limited to, documents that relate to scope, schedule, budget management, design documents prepared by the designer of record, cost estimates prepared by the designer of record, invoices, risk assessment, and procurement documentation. The Joint Development Team shall determine which other Substation Project meetings, such as meetings with contractors and vendors, the Parties may attend and will provide notification of such meetings.

3.6 **Joint Development Team Obligations.** In order to effectuate the purpose and intent of the Joint Development Team as provided in Section 3.3, the Joint Development Team shall:

(a) finalize the Substation Project description as to the 230kV portion of the Substation Project as preliminarily set forth in Schedule A and prepare a Substation Project execution plan (the "Project Execution Plan") in accordance with PSE&G's Electric Delivery Projects & Construction (DP&C) Project Management Procedures ("PSE&G Management Procedures") provided by PSE&G to NJ TRANSIT, except for such sections of the PSE&G Management Procedures as may be determined by the Joint Development Team to be unnecessary for the Substation Project. NJ TRANSIT agrees that the 13.2 kV, 55kV, 27kV portions of the Substation Project as set forth in Schedule A are established minimum design requirements that are complete and not subject to change and the implementation of which is subject to Good Utility Practice. NJ TRANSIT acknowledges that the 230kV portion of the Substation Project as set forth in Schedule A is only preliminary and as such is subject to change.

(b) prepare a preliminary operations protocols document addressing the details of the Parties' operations and various responsibilities with respect to the Existing Substation during the construction of the Substation Project (the "Preliminary Operations Protocols Document"). The Parties shall also prepare a final operations protocols document addressing the details of the Parties' operations and various responsibilities with respect to the completed Substation Project (the "Final Operations Protocols Document"). The protocols documents shall include provisions for the Parties to coordinate to develop and revise the interface system currently utilized by NJ TRANSIT power dispatchers for the Existing Substation. Both the Preliminary Operations Protocols Document and the Final Operations Protocols Document shall be filed with the NJBPU pursuant to the Stipulation.

(c) adhere to NJ TRANSIT's design standards with respect to the 55kV, 27kV and 13.2kV portions of the Substation Project, as described in Schedule A to this Agreement, to the extent that such design standards are more stringent than PSE&G's design standards and consistent with Good Utility Practice.

(d) adhere to PSE&G's design standards with respect to the 230kV portion of the Substation Project, as described in PSE&G's Engineering Specification Standard

Engineering Design Guidelines for Substations and Switching Stations General Requirements, as may be amended, which shall be made available to NJ TRANSIT upon NJ TRANSIT's request.

(e) be responsible for the execution of Substation Project consistent with the Project Execution Plan and the terms and conditions of this Agreement.

(f) rely, to the extent practicable, on the design plans completed to date by NJ TRANSIT's engineering firm, Gannett Fleming, Inc. ("GF"), to the extent such design meets PSE&G's design and construction standards and Good Utility Practice.

(g) implement the Substation Project in accordance with the Project Schedule, as may be amended by the Joint Development Team.

(h) adhere to the principles of cooperation set forth in Section 3.11.

(i) to the maximum extent feasible, resolve any conflicts between the Parties expeditiously and without imposing undue burden on any Party.

(j) agree on reasonable procedures to ensure that any notices, documents or other information that a Party is required to provide to the other Party or any other Person or entity under this Agreement or by Law are distributed to the Parties. Reasonable procedures shall require that before any notices, documents or other information related to the Substation Project are distributed to third parties, including Governmental Entities, that prior written consent of the non-disclosing Party must be obtained and such written consent shall not be unreasonably withheld or delayed and shall be consistent with the requirements of Section 19.1.

(k) develop a timeline for filing of any necessary permits with Governmental Entities and potential appearances by NJ TRANSIT before such Governmental Entities.

(l) develop and maintain, for implementation by PSE&G, a site security plan (the "Site Security Plan"). The Site Security Plan shall: (i) delineate functional responsibilities required for PSE&G, NJ TRANSIT and Project Contractors, (ii) provide for a site security ID tracking system and Project Contractors identification, (iii) identify sensitive security delivery and areas of Work at the Rail Operations Facilities, (iv) provide for on-site security supervision at the Work Zones consistent with PSE&G's practices for the nature and scope of the Work, including security guards as necessary, (v) provide reasonable controls for access to Work Zones by Persons and vehicles, and (vi) provide security incident record and reporting systems.

(m) create an emergency call list, which shall set forth the names, addresses and telephone numbers (work, home and cellular) of at least three (3) Persons from each of PSE&G and NJ TRANSIT and the order in which such Persons should be contacted in the event NJ TRANSIT needs to contact PSE&G or PSE&G needs to contact NJ TRANSIT. The emergency call list may be amended from time to time by Written Notice to the other Party. For purposes of the emergency call list, all Persons representing either Party thereon

must have the authority to stop the activity or activities on the Work Zone set forth in any notice of an emergency.

(n) prior to commencement of the Work, agree on a "Project Site Safety Plan" and "Emergency Response Plan and Emergency Evacuation Plan."

(o) have at least 1 meeting of the Joint Development Team per month during the Construction Period. The agenda for each such meeting shall, at minimum, cover the following topics: (i) safety report, (ii) NJ TRANSIT to provide, to the extent it has any, issues of concern pursuant to Section 3.8.4, (iii) PSE&G to provide, to the extent it has any, issues of concern pursuant to Section 3.10.7, (iv) PSE&G and NJTRANSIT to identify any information they may need to evaluate to items (ii) and (iii), (v) identification of any potential changes to the Substation Project that impact the Estimated Project Budget and (vi) identification of any issues of cooperation as provided in Section 3.11.

(p) the procedures referred to in Section 4.1 shall be developed by the Joint Development Team.

(q) following execution of the Agreement, the Parties will jointly develop a permitting plan for the Substation Project consistent with the Project Schedule, including designation of responsibilities for obtaining the permits and any required modifications of such permits. In this regard, the Parties recognize that NJ TRANSIT has applied for and obtained certain permits and that these permits will need to be modified to take into account, among other things, the revised engineering associated with the Substation Project. Each Party shall provide any required signature to a permit, permit modification or application for a permit or modification promptly, but in no event later than ten (10) Days following the date such signature is requested.

3.7 Comment and Approval Rights. The Joint Development Team shall have comment and approval rights with respect to the Substation Project as follows:

3.7.1 Any changes to the Estimated Project Budget shall be subject to comment and approval by the Joint Development Team. The Parties agree that any request for increase to the Estimated Project Budget will take into account the amount of any remaining risk and contingency.

3.7.2 Any changes to the Project Schedule shall be subject to comment and approval by the Joint Development Team. The Project Schedule includes the time periods by which NJ TRANSIT must obtain consents and approvals regarding the Substation Project approved by the Joint Development Team. To the extent that NJ TRANSIT does not receive such consents and approvals within the designated time periods, the Project Schedule shall be extended by one Day for each Day that NJ TRANSIT is delayed in obtaining such consents and approvals and to the extent necessary, the Estimated Project Budget shall be increased to account for costs attributable to such delay.

3.7.3 The design and changes thereto to the 230kV portion of the Substation Project shall be subject to review and comment by the Joint Development Team, consistent with

PSE&G Management Procedures and standards. PSE&G shall consider, in good faith, the comments provided by the NJ TRANSIT members of the Joint Development Team. The final interpretation of the PSE&G Management Procedures and standards shall be determined by PSE&G.

3.7.4 The design and changes thereto to the 13.2kV, 27kV and 55kV portions of the Substation Project shall be subject to review and comment by the Joint Development Team, consistent with PSE&G Management Procedures and standards and/or NJ TRANSIT standards that may be equal to or more stringent than the PSE&G standards. NJ TRANSIT shall consider, in good faith, the comments provided by PSE&G members of the Joint Development Team. The final determination of the applicable standards regarding the 13.2kV, 27kV and 55kV portions of the Substation Project shall be determined by NJ TRANSIT consistent with Good Utility Practice.

3.7.5 Unknown Costs as they occur will be subject to review and approval by the Joint Development Team. PSE&G shall provide prompt Written Notice of the Unknown Cost condition when it is first learned. In the case of Unknown Costs caused by the action or inaction of NJ TRANSIT, as pursuant to Sections 7.1.1(a)(4) and 7.1.1(a)(5), PSE&G shall provide Written Notice to NJ TRANSIT, as reasonably known, to allow NJ TRANSIT an opportunity to cure or mitigate the condition responsible for the Unknown Cost condition.

3.7.6 Review and approval of funding of Project Costs to be paid by NJ TRANSIT in excess of NJ TRANSIT's currently approved Substation Project funding amount of \$132,000,000. As part of the Joint Development Team's review of such funding requests, NJ TRANSIT shall make every effort to obtain the NJ TRANSIT Board of Directors' approval of any such funding request as soon as practicable, but in no event later than thirty (30) Days following the date of the funding request.

3.8. NJ TRANSIT Responsibilities Generally.

3.8.1 Prior to the commencement of the construction of the Substation Project, NJ TRANSIT will identify any federal interest in the Existing Substation. If there is a federal interest in the Existing Substation, NJ TRANSIT will address disposal of all equipment, fixtures, and materials no longer needed and NJ TRANSIT will have the right to remove components and equipment that serve a useful function before demolition.

3.8.2. NJ TRANSIT will be responsible for the construction of the Parking Project and for providing PSE&G with access to the Project Site to enable PSE&G to construct the Substation Project consistent with the Project Execution Plan. NJ TRANSIT shall submit to the Joint Development Team NJ TRANSIT's proposed design of the Parking Project for PSE&G's review and comment. For avoidance of doubt, the Parking Project is not part of the Substation Project and the costs to design and construct the Parking Project are not Project Costs. The Parties agree and acknowledge the construction of the Parking Project will impact the Substation Project and the Project Schedule and therefore it is imperative that the Joint Development Team coordinate the design and construction of the Parking Project as to not adversely impact the construction and operation of the Substation Project.

3.8.3 NJ TRANSIT acknowledges that prompt responses to matters submitted for its review, comment, or, to the extent applicable, approval during the Construction Period are necessary to maintain the Project Schedule. NJ TRANSIT will not unreasonably withhold, condition or delay its review or, to the extent applicable, approval of any such construction-related matter submitted to NJ TRANSIT during the Construction Period.

3.8.4 NJ TRANSIT shall provide PSE&G Written Notice of any concern or issue of NJ TRANSIT or NJ TRANSIT'S Construction Representatives or its NJ TRANSIT Substation Project Oversight Advisor has with respect to the Substation Project, Project Schedule, the Estimated Project Budget, Project Costs, or the reasonableness and prudence with respect to any matter related to the Substation Project. Such Written Notice shall be specific and include reference to or inclusion of any supporting documentation that NJ TRANSIT has in its possession or has the ability to access at the time of the Written Notice in order to support such concern or issue. NJ TRANSIT will promptly supplement such Written Notice with any additional supporting documentation not available at the time of the first Written Notice as soon as the additional information or supporting documentation becomes available to NJ TRANSIT, provided that NJ TRANSIT did not have the additional supporting documentation or access thereto at the time of the original Written Notice and could not have requested it be made available. In the event that such Written Notice and supporting documentation, including any supplemental supporting documentation, is not provided to PSE&G reasonably contemporaneous with the time that NJ TRANSIT knew or should have known of the concern or issue taking into account the information made available to NJ TRANSIT or information that NJ TRANSIT could have requested be made available, NJ TRANSIT shall be deemed to have waived any such issue or concern.

3.8.5 NJ TRANSIT shall pay PSE&G all Project Costs as required by Article 7.

3.8.6 NJ TRANSIT shall furnish to PSE&G such information as PSE&G may reasonably request to facilitate the performance of the Substation Project or Parking Project, including any reports provided by the NJ TRANSIT Substation Project Oversight Advisor and Construction Representative.

3.8.7 NJ TRANSIT'S Construction Representative may maintain a field office for the receipt of communications and to facilitate the observation of the performance of the Substation Project. NJ TRANSIT'S Construction Representative's field office shall be located at a site either within a designated Work Zone or at another location within the Rail Operation Facilities mutually acceptable to NJ TRANSIT and PSE&G.

3.8.8 In any proceeding before a Governmental Entity regarding the Substation Project NJ TRANSIT shall support PSE&G and the Substation Project and shall not join any dispute or objection, or take an adverse position to PSE&G, with respect to any portion of the Substation Project, including the incurrence of any Project Costs within the Estimated Project Budget as may be amended. For purposes of clarity, the foregoing requirement shall not apply to NJ TRANSIT'S rights in any proceeding before the NJBPU with respect to Disputed Costs as provided for in Section 7.4, but it shall apply to any claim challenging Project Costs

(other than Disputed Costs by NJ TRANSIT) by a third party in any proceeding before the NJBPU or any other Governmental Entity having jurisdiction over such costs.

3.9 NJ TRANSIT's Designated Representatives.

3.9.1 Construction Representative. At all times during the Construction Period, NJ TRANSIT, at its sole expense (and which shall not be included in Project Costs), may utilize a qualified construction consultant as NJ TRANSIT's Representatives to assist NJ TRANSIT on the Joint Development Team. Such assistance may include the observation and review of the work performed by PSE&G, provision of on-site project support to NJ TRANSIT, as necessary, including the facilitation of PSE&G requests to NJ TRANSIT, and to advise NJ TRANSIT in connection therewith ("NJ TRANSIT's Construction Representative(s)"). NJ TRANSIT's Construction Representatives may be in-house employees of NJ TRANSIT or third-party consultants qualified to provide construction support services. Upon request, NJ TRANSIT shall provide to PSE&G evidence of the qualifications of NJ TRANSIT's Construction Representatives. NJ TRANSIT's Construction Representatives are set forth in the Index of Designated Representatives attached to and made part of this Agreement as Schedule G.

3.9.2 NJ TRANSIT Substation Project Oversight Advisor. At all times during the Construction Period, NJ TRANSIT, at its sole expense (and which shall not be included in Project Costs), may utilize a qualified third-party or in-house consultant to advise NJ TRANSIT staff and the NJ TRANSIT's Board of Directors, as appropriate, on the construction, design, equipment procurement, and other elements of the Substation Project ("NJ TRANSIT Substation Project Oversight Advisor"). The NJ TRANSIT Substation Project Oversight Advisor will be tasked specifically to provide advice to NJ TRANSIT related to the Substation Project, Project Schedule, Project risk, and Estimated Project Budget and to inform NJ TRANSIT's assessment of Project Costs. For purposes of clarity, the NJ TRANSIT Substation Project Oversight Advisor is for the purpose of assisting NJ TRANSIT with respect to NJ TRANSIT's participation in the Substation Project pursuant to the terms and conditions of this Agreement.

3.9.3. Changes to Designated Representatives. NJ TRANSIT may change NJ TRANSIT's Construction Representatives or NJ TRANSIT's Substation Project Oversight Advisor by Written Notice to PSE&G.

3.9.4. Reliance on NJ TRANSIT Designated Representatives. PSE&G shall have the right to rely on statements, consents and approvals given in writing by NJ TRANSIT's Designated Representatives, NJ TRANSIT'S Construction Representatives or NJ TRANSIT Substation Project Oversight Advisor unless and until a notice of substitution is received by PSE&G pursuant to Section 3.9.3.

3.10 PSE&G Responsibilities Generally.

3.10.1 PSE&G shall design, engineer, procure, install and construct the Substation Project, including any modifications thereto, in accordance with: (i) the terms of this

Agreement; (ii) PSE&G's reliability principles, guidelines, and standards; (iii) the terms of PSE&G's Tariff; and (iv) Good Utility Practice.

3.10.2 PSE&G shall retain and coordinate the services of Project Contractors for the development and construction of the Substation Project in a manner consistent with the terms and provisions of this Agreement. PSE&G shall cause its Project Contractors to implement and comply with the applicable PSE&G Management Procedures and the Work Rules. When applicable, PSE&G shall cause the Work Rules to be incorporated into the agreements between PSE&G and Project Contractors. For the avoidance of doubt, PSE&G is not a construction contractor or subcontractor of NJ TRANSIT and PSE&G is not providing construction services to NJ TRANSIT.

3.10.3 PSE&G may maintain a field office for the receipt of communications regarding the Substation Project and to facilitate the performance of the Work. The field office will be located either within a designated Work Zone or at another location within the Rail Operations Facilities mutually acceptable to NJ TRANSIT and PSE&G.

3.10.4 If requested, PSE&G shall make reasonable accommodations within the Work Zone to facilitate the installation of NJ TRANSIT's Construction Representative's field office, including, without limitation, making available utility tie-ins and parking spaces.

3.10.5 PSE&G shall provide NJ TRANSIT and NJ TRANSIT's Representatives with reasonable access to the Work Zone and Substation Project or at off-site fabrication facilities to the extent applicable, sufficient to perform their duties and obligations hereunder.

3.10.6 PSE&G will engage GF (NJ TRANSIT's designer of record) in preliminary engineering and for detailed engineering provided that retention of GF is consistent with PSE&G corporate practices. If it is determined that GF cannot be retained consistent with PSE&G corporate practices or if GF declines or withdraws from the engagement for any reason, PSE&G shall develop, subject to NJ TRANSIT's review and approval, qualifications for the retention of a new designer of record for preliminary engineering and detailed engineering. Such qualifications must expressly include experience with commuter railroad traction power infrastructure design. PSE&G shall select the new designer of record in a manner consistent with PSE&G corporate practices.

3.10.7 PSE&G shall provide NJ TRANSIT Written Notice of any concern or issue of PSE&G with respect to NJ TRANSIT's performance of its obligations related to the Substation Project, Project Schedule, the Estimated Project Budget, or the Parking Project. Such Written Notice shall be specific and include reference to or inclusion of any supporting documentation that PSE&G has in its possession or access to in order to support concern or issue. In the event that such Written Notice and supporting documentation is not provided to NJ TRANSIT reasonably contemporaneous with the time that PSE&G knew or should have known or the issue or concern taking into account the information made available to PSE&G by NJ TRANSIT or information that PSE&G could have requested be made available, PSE&G shall be deemed to have waived any such issue or concern.

3.10.8 PSE&G acknowledges that prompt responses to matters submitted for its review, comment, or, to the extent applicable, approval with regard to the Parking Project are necessary to maintain NJ TRANSIT'S project schedule for the Parking Project. PSE&G will not unreasonably withhold, condition or delay its review or, to the extent applicable, approval of any such design or construction-related matter submitted to PSE&G regarding the Parking Project.

3.11 Principles of Cooperation.

3.11.1 Each Party agrees to cooperate with the other Party. Each Party further acknowledges and agrees that from time to time, construction activities and business operations may conflict and it may not be possible to satisfy all objectives of each Party at the same time. In such circumstances, the Joint Development Team shall refer first to the Project Execution Plan. If the Project Execution Plan fails to address the area of conflict, then the Joint Development Team shall apply the general principles set forth below in this Section, to attempt to minimize such "conflict" on an equitable basis. Each Party shall adhere to the following specific guidelines with respect to a conflict:

3.11.2 The Parties shall endeavor to implement the most cost efficient means of correction in the event of a conflict. The Parties shall take appropriate measures to resolve the conflict recognizing that neither Party is entitled to the optimal solution.

3.11.3 Each Party shall notify the other Party in writing of any action contemplated that the notifying party believes is likely to cause a conflict and provide the other Party with a reasonable opportunity to discuss alternative measures.

3.11.4 The Parties shall comply, at all times, with applicable Laws.

3.11.5 Any conflict that cannot be resolved by the Parties notwithstanding the foregoing shall be resolved in accordance with the dispute resolution provisions contained in Article 13.

ARTICLE IV

WORK ZONE BARRICADE

4.1 Prior to the commencement of the Work and as contemplated by the Project Execution Plan, PSE&G shall erect a fence or other barricade around the perimeter of its Work Zone sufficient at all times during performance of the Work to control entry into the Work Zone and to physically separate the public from the Work performed within the Work Zone. The fence or other barricade installed to segregate a Work Zone from the Rail Operation Facilities shall comply with all applicable Laws. Fence barricades shall be customary heights (approximately 8') and include black fabric cover to conceal the activity within the Work Zone. PSE&G shall be responsible for ensuring that all protective measures for the

Existing Substation are in place during the Construction Period. Such protective procedures shall be developed by the Joint Development Team.

ARTICLE V

WORK ZONE ACCESS; EMERGENCY ENTRY

5.1 **Work Zone Access.** PSE&G shall cause the PSE&G's Project Contractors to comply with PSE&G's Work Zone security and access policies and procedures as developed by the Joint Development Team pursuant to Section 3.6(l).

5.2 **Emergency Entry into Work Zone.** Notwithstanding anything herein to the contrary, NJ TRANSIT may enter a Work Zone in case of emergency. NJ TRANSIT shall promptly notify PSE&G by telephone of any such emergency entry, and shall re-secure the entrance to the Work Zone upon departure.

ARTICLE VI

ACCESS TO PROPERTY; OWNERSHIP OF PROJECT

6.1 **Project Site Access Agreement.** NJ TRANSIT shall provide PSE&G access to the Project Site to enable PSE&G to construct, operate and maintain the Substation Project, including all necessary licenses, easements and rights of way, as set forth in the Substation Easement Agreement.

6.2 **Ownership of the Project.** The Parties agree and acknowledge that PSE&G shall be the sole owner of the Substation Project located on the Project Site.

ARTICLE VII

PROJECT COSTS AND PAYMENT OBLIGATIONS

7.1 **Project Costs.**

7.1.1 **Parties Respective Contributions to Project Costs.**

(a) Prior to the Effective Date, PSE&G and NJ TRANSIT have jointly reviewed plans and discussed potential risks to construct the Substation Project and the costs associated therewith. Through this review process, the Parties have used Reasonable Efforts to establish the Estimated Project Budget (as defined below) that include costs of both NJ TRANSIT and PSE&G to complete the Substation Project. The Parties acknowledge and agree that the Estimated Project Budget is based upon the facts and circumstances known to PSE&G and NJ TRANSIT as of the Effective Date based upon their joint reviews of the various elements of the Substation Project. During the construction of the Substation Project, PSE&G and NJ

Transit shall use Reasonable Efforts to complete the Substation Project at the Estimated Project Budget. The Parties estimate that the base cost for the Substation Project, excluding any risk and contingency, is \$206,000,000. PSE&G estimates the Project Costs (including risk and contingency) is \$244,000,000 and NJ TRANSIT estimates the Project Costs is \$232,000,000 (including risk and contingency). For purposes of this Agreement, the Parties agree that the estimated Project Costs shall be \$232,000,000, excluding Unknown Costs, as set forth in greater detail in Schedule J attached hereto (the "Estimated Project Budget"). As part of the review process, NJ TRANSIT and PSE&G identified certain categories of costs that are not in the Estimated Project Budget since they are not known or reasonably subject to estimate as of the Effective Date, which include the occurrence of any of the following events that may impact the final Project Costs for the Substation Project (collectively "Unknown Costs"):

1. Force majeure events described in Article 17 herein;
2. The cost to obtain any property rights to complete the Substation Project;
3. Subsurface conditions, including the presence of any non-PSE&G Hazardous Materials;
4. Any increases in NJ TRANSIT costs that are included in the Estimated Project Budget, including, but not limited to, any changes to the preliminary design of the 13.2kV, 27kV and 55kV portions of the Substation Project that result in additional costs;
5. Any actions or inactions by NJ TRANSIT, its Designated Representatives, its employees, agents and Project Contractors that impede PSE&G's ability to complete the Substation Project in a timely and efficient manner;
6. The cost of PSE&G and PSE&G Project Contractors to work with and address the requests and requirements, that are in excess of what is required by the PSE&G Management Procedures;
7. The cost associated with implementing the Preliminary Operational Protocols and Final Operational Protocols to be agreed to by the Parties pursuant to Section 3.6(b); and
8. Any delays or costs associated with obtaining the PLR as provided in Section 9.1.

(b) As provided for in the Stipulation, the Parties' respective contributions to the Project Costs are as follows:

(i) PSE&G's entire contribution to the Project Costs shall be limited to \$100,000,000 (the "PSE&G Contribution"). The PSE&G Contribution amount may be increased to account for a ruling by the Internal Revenue Service with respect to a PLR determining NJ TRANSIT's contribution to the Project Costs as income taxable to PSE&G only pursuant to approval of the NJBPU pursuant to a final, non-appealable order in form and substance acceptable to PSE&G.

(ii) NJ TRANSIT shall be responsible for all Project Costs in excess of the PSE&G Contribution, including those amounts necessary to reimburse PSE&G for any taxes imposed on PSE&G as a result of NJ TRANSIT's contributions to the costs of constructing the Project, as provided in Article 9 below (the "NJ TRANSIT Contribution"). Notwithstanding the foregoing, NJ TRANSIT shall not be responsible for Disputed Costs

assessed against PSE&G by the NJBPU pursuant to Article 13 or costs arising as the result of third party claims in accordance with Section 16.1.3.

7.1.2 **NJ TRANSIT Payment of Project Costs.** By each March 1st of each year prior to the completion of the Substation Project, PSE&G shall notify NJ TRANSIT of the expected Project Costs to be expended during the following NJ TRANSIT Fiscal Year (July 1 through June 30) based on information then reasonably known to the Joint Development Team. The Joint Development Team shall review together the assumptions underlying such projections. The Joint Development Team will update such projections as they become available, with the understanding that depending on the status of the budgeting and appropriating cycle, funds in excess of those projected in the March 1 notification may not be available and that the unavailability of funds will impact the Project Costs and Project Schedule. In months one through twenty-four of the Substation Project, NJ TRANSIT shall budget an amount equal to one hundred and twenty percent (120%) of the estimated NJ TRANSIT portion of Project Costs for such NJ TRANSIT Fiscal Year, so that such amount shall be available to NJ TRANSIT to pay Project Costs during the NJ TRANSIT Fiscal Year. In the remaining months until the completion of the Substation Project, NJ TRANSIT shall budget an amount equal to one hundred and fifteen percent (115%) of the estimated NJ TRANSIT portion of the remaining Project Costs for such NJ TRANSIT Fiscal Year(s), so that such amount shall be available to NJ TRANSIT to pay Project Costs during the NJ TRANSIT Fiscal Year. For purposes of clarity, all funding requests for Project Costs will be based on actual anticipated Project Costs and, as such, funding requests will not include amounts for risk and contingency and; provided further, such funding requests shall be based on NJ TRANSIT's currently approved Substation Project funding amount of \$132,000,000 and any increase in such amount shall require the approval of the Joint Development Team pursuant to Section 3.7.6.

(a) **Appropriation.** NJ TRANSIT's funding of its portion of the Project Costs is subject to the appropriation of funds, the continuing authorization of the Transportation Trust Fund, and the approval of NJ TRANSIT's Board of Directors. NJ TRANSIT shall provide PSE&G Written Notice immediately following NJ TRANSIT becoming aware that sufficient funds for any NJ TRANSIT Fiscal Year have not been, or shall not be, timely appropriated, authorized and approved. The Parties recognize and agree that the foregoing is solely for the purpose of explaining NJ TRANSIT's funding and appropriation process. NJ TRANSIT'S failure to appropriate funds or obtain any necessary approvals, authorizations and continued authorizations with respect to the Substation Project and Project Costs, shall not in any way relieve NJ TRANSIT's obligation to pay Project Costs as required under this Agreement. In the event that necessary funds are not timely appropriated, authorized and approved, PSE&G, upon Written Notice to NJ TRANSIT, shall stop all Work on the Substation Project until such time as such funds are authorized, appropriated, and approved consistent with the requirements of this Agreement; provided, however, that in the event that funds are not authorized, appropriated and approved within ninety (90) Days of such Written Notice to stop Work, PSE&G shall have the right to terminate this Agreement, as provided for in Section 15.1.2(i)(b) of the Agreement and NJ TRANSIT shall be obligated to pay PSE&G, on its demand, all of PSE&G's Project Costs incurred by PSE&G before and after the date of termination of the Agreement as a result of the termination.

(b) No later than ten (10) Days following the date on which the condition subsequent set forth in Section 2.1.1(a) is satisfied, NJ TRANSIT shall remit to PSE&G the amount of \$10,000,000 (the "Deposit") plus an advance payment in an amount equal the estimated NJ TRANSIT portion of Project Costs for the first six (6) months of the Substation Project, as determined by PSE&G (the "Advance Payment").

(c) Thereafter, on a quarterly basis and until such time as the Substation Project is completed and all Project Costs have been paid, NJ TRANSIT shall replenish the Operating Account by making a payment to PSE&G by the first day of each calendar quarter in an amount equal to the estimated NJ TRANSIT portion of Project Costs for the six (6) month period following the first day of the applicable calendar quarter (each replenishment an "Additional Advance Payment"). PSE&G shall notify NJ TRANSIT of the expected Project Costs to be expended during each such six (6) month period thirty (30) days in advance of the upcoming calendar quarter.

(d) PSE&G shall deposit the Deposit, the Advance Payment and the Additional Advance Payments in the Operating Account(s) as described in Section 7.2.1. Until completion of the Substation Project, the Operating Account shall at all times maintain a minimum balance of \$10,000,000. The Deposit held in the Operating Account shall be the last monies applied to Project Costs. PSE&G, in its sole and exclusive discretion, may deposit all or a portion of the Deposit, Advance Payment and Additional Advance Payment in an account that earns interest at rates consistent with a money market account. Any interest earned on the Deposit, Advance Payment and Additional Advance Payment shall be applied to NJ TRANSIT's portion of Project Costs.

(e) If during the term of this Agreement there is insufficient funds from NJ TRANSIT in the Operating Account in order to maintain the Project Schedule or otherwise pay Project Costs when due, PSE&G shall notify NJ TRANSIT in writing stating the amount of the Additional Advance Payment then required and NJ TRANSIT shall be required to pay PSE&G the requested amount for deposit into the Operating Account no later than ten (10) Days of such request. PSE&G's receipt of the Deposit, the Advance Payment and the Additional Advance Payments is a condition precedent to PSE&G's obligation to construct the Substation Project and PSE&G, in addition to its rights and remedies under this Agreement, may suspend work on the Substation Project if NJ TRANSIT fails to comply with this Section.

7.2 METHOD OF PAYMENT OF PROJECT COSTS

7.2.1 PSE&G's long-term, unsecured, unsubordinated debt ratings as of the Effective Date in the case of Standard & Poor's is A and in the case of Moody's is Aa3. Provided that the long-term, unsecured, unsubordinated debt ratings of PSE&G, as the case may be, are not lower than BBB- (minus)(in the case of S&P) and Baa3 (in the case of Moody's) PSE&G shall hold the Deposit, Advance Payment and all subsequent Additional Advance Payments in segregated PSE&G accounts, which PSE&G shall establish when it receives the Advance Payment (the "Operating Account(s)")

7.2.2 PSE&G shall be entitled to withdraw funds from the Operating Account(s) from time-to-time as necessary to fund payment for Project Costs as and to the

extent incurred. However, if PSE&G fails to maintain the minimum debt rating required in the previous section, then PSE&G shall cause all such payments to be held in an account with a domestic office of a commercial bank or trust company organized under the laws of the United States (or any state or a political subdivision thereof), having a branch in New Jersey or New York City, having assets of at least \$1 Billion and a long term debt rating or deposit rating of at least (i) "A3" from Moody's or (ii) "A- (minus)" from S&P (a "Qualified Institution"), which account may include property of other parties which have delivered payments to PSE&G under other contracts. In addition, PSE&G may direct NJ TRANSIT to transfer or deliver its payments directly into PSE&G's account with the Qualified Institution.

7.2.3 PSE&G shall pay Project Costs from the Operating Account(s) as they become due; with each Party paying the Project Costs based on each Party's proportionate responsibility for such Project Costs based upon the Substation Project base cost of \$206,000,000, until such time as PSE&G has paid the entire PSE&G Contribution, after which NJ TRANSIT shall be responsible for 100% of the Project Costs. Following PSE&G's determination that the Substation Project is complete, should there be any amount remaining of the PSE&G Contribution that has not been applied to Project Costs, any such amount shall be remitted by PSE&G to NJ TRANSIT within ten (10) Business Days following the date PSE&G determines that the Substation Project is complete. By way of example only, if PSE&G were to pay Project Costs in the amount of \$1,000,000 and the PSE&G Contribution equaled \$100,000,000, NJ Transit would be responsible for paying \$514,563.11 (which PSE&G would pay from the funds held in the Operating Account) and PSE&G would pay the remaining balance of \$485,436.89.

7.2.4 PSE&G shall return to NJ TRANSIT funds remaining, if any, in the Operating Account: (a) in the event of a termination of the Agreement by NJ TRANSIT pursuant to Section 15.1.1 or Section 15.1.2, following payment of all Project Costs pursuant to Section 15.1.3; (b) in the event of a termination of the Agreement by PSE&G pursuant to Section 15.1.1 or Section 15.1.2, following the payment of all Project Costs to PSE&G pursuant to Section 15.1.3; or (c) after the Substation Project is completed and all Project Costs are paid.

7.3 Report of Project Costs: Audit of Project Costs.

7.3.1 Within fifteen (15) Business Days following the end of each calendar quarter, PSE&G shall furnish NJ TRANSIT with a summary of the Project Costs incurred during the previous calendar quarter. PSE&G shall provide NJ TRANSIT the supporting documentation PSE&G has for such Project Costs, such as paid PSE&G Project Contractor invoices for work on the Substation Project. PSE&G shall also provide an accounting of any interest earned on the Deposit, Advance Payment and Additional Payment during the previous calendar year.

7.3.2 PSE&G shall retain records provided to the Joint Development Team or NJ TRANSIT pursuant to Section 7.3.1 with respect to all Project Costs and permit the authorized representatives of NJ TRANSIT including, but not limited to, the Construction Representatives, NJ TRANSIT's Auditor General and the NJ Office of State Comptroller, to inspect and audit all such data and records from the Effective Date and for five (5) years following the completion of the Substation Project.

7.3.3 PSE&G further agrees to include in all contracts issued to PSE&G Project Contractors a provision to the effect that the PSE&G Project Contractor agrees that it will keep records with respect to all Project Costs and that NJ TRANSIT and the NJ Office of the State Comptroller or any of their duly authorized representatives shall, until the expiration of five (5) years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such PSE&G Project Contractor, involving transactions related to the PSE&G Project Contractor. The term "PSE&G Project Contractor" as used in this clause excludes:

(a) Purchase orders not exceeding \$10,000, and contracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(b) The periods of access and examination described above, for records which relate to appeals under the "Disputes" clause of any contract related to the Substation Project, litigation of the settlement of claims arising out of the performance of this Agreement or any contract related to the Substation Project, or costs and expenses of this Agreement as to which exception has been taken by NJ TRANSIT or its duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been fully and finally disposed of.

7.4 Challenge to Disputed Costs.

7.4.1 NJ TRANSIT may not dispute any Project Costs before the NJBPU unless and until total actual Project Costs exceed \$244,000,000 plus only those Unknown Costs that are determined to be attributable to NJ TRANSIT as provided in Sections 7.1.1(a)(4) and 7.1.1(a)(5) (collectively, the "Dispute Threshold").

7.4.2 At such time that total actual Project Costs exceed the Dispute Threshold, NJ TRANSIT may only challenge Project Costs:

(a) where Written Notice has been provided by NJ TRANSIT in accordance with Section 3.8.4 of the Agreement ("Disputed Costs"); and

(b) in the amount by which the total actual Project Costs exceed the Dispute Threshold.

7.4.3 NJ TRANSIT may also dispute the fraudulent incurrence of costs by PSE&G or PSE&G's Project Contractors which costs are charged to the NJ TRANSIT Contribution or use by PSE&G of the NJ TRANSIT Contribution for purposes other than the Substation Project.

7.4.4 Any Disputed Costs and allegations of fraudulent incurrence of costs by PSE&G pursuant to Section 7.4.3 shall be subject to the dispute resolution procedures in Article 13 of this Agreement. In any proceeding relating to Disputed Costs before the NJBPU pursuant

to Section 13.2.3, NJ TRANSIT shall initiate such a proceeding and PSE&G shall have the burden of proof that such Disputed Costs were incurred in accordance with Reasonable Efforts.

ARTICLE VIII

ENVIRONMENTAL CONSIDERATIONS FOR THE SUBSTATION PROJECT

8.1 **Environmental Reports.** Except for the NJ TRANSIT Environmental Reports, receipt of which is hereby acknowledged by PSE&G, within five (5) Business Days following the Effective Date, NJ TRANSIT shall provide PSE&G all surveys, Environmental reports, studies or test results pertaining to the Project Site in the possession of NJ TRANSIT.

8.2 **Environmental Due Diligence.** Following the Effective Date, PSE&G shall have the right to enter the Project Site and to conduct physical, engineering, environmental and other tests, including, but not limited to soil, groundwater and geotechnical assessments and investigation (including any testing desired by PSE&G to complete a Phase II Environmental Site Assessment Report and/or any similar report), and any other tests with regard to the Project Site. PSE&G shall share final copies of all such test results and reports with NJ TRANSIT.

8.3 **Hazardous Materials.** If during the performance of its Work PSE&G encounters material reasonably believed to be a Hazardous Material at the Work Zone, then PSE&G shall immediately stop Work in the area affected by such Hazardous Material and report the condition verbally and in writing to NJ TRANSIT's Designated Representative. To the extent that such Hazardous Materials are in a discrete area and will not otherwise materially impact the performance of Work otherwise approved under the Project Execution Plan, PSE&G shall have the right to notify NJ TRANSIT that it elects to amend or modify the Project Execution Plan to delete the portion of Work impacted by the Hazardous Materials and proceed with Construction; provided, however, that this will not obviate the need for NJ TRANSIT to perform its obligations pursuant to this Article 8 and applicable Law. Notwithstanding the foregoing, the Parties acknowledge that various constituents of Historic Fill material have been identified on or around the Project Site, and the discovery or presence of Historic Fill shall not cause PSE&G to stop Work.

8.4 **Preexisting Project Site Conditions- Hazardous Materials.** PSE&G shall have no obligation to investigate or remediate any Hazardous Materials on, under or migrating from the Project Site that are preexisting, as of the Effective Date ("Non-PSE&G Hazardous Materials"). PSE&G's sole obligations for any Non-PSE&G Hazardous Materials shall be to properly characterize and dispose of any Non-PSE&G Hazardous Materials it generates to complete the Substation Project (e.g., excavation of soil and dewatering during construction of substation foundations). Any costs, expenses or other amounts incurred by PSE&G in performing such actions shall be Project Costs. Notwithstanding the foregoing, if PSE&G or any of its Project Contractors discovers the presence of any Non-PSE&G Hazardous Materials on, in, under or migrating from the Project Site that constitutes a Reportable Event, NJ TRANSIT shall, at its sole cost, liability and expense, take all actions that may be required by Law, in coordination with PSE&G and in a manner so as to minimize interference

with the completion and operation of the Project. In addition, NJ TRANSIT shall comply with all Law and valid orders of any Governmental Entity relating to the presence or release of any Non-PSE&G Hazardous Materials on, in, under or migrating from the Project Site.

8.5 PSE&G Hazardous Materials. PSE&G shall not use, store, generate, treat, transport or handle, any Hazardous Materials on, in, under or about the Project Site except in the normal course of completing the Substation Project and in compliance with applicable Laws. Promptly after becoming aware of the presence of any Hazardous Materials on, in, under or migrating from the Project Site during the Substation Project that were stored, released, spilled or discharged to or on the Project Site, as applicable, by PSE&G or its Representative ("PSE&G Hazardous Materials") during the Work, PSE&G shall, at its sole cost, liability and expense, take all actions required by Law, in coordination with NJ TRANSIT, including, without limitation, the delivery of any required notices at the expense of PSE&G: (i) to remove or treat such PSE&G Hazardous Materials and to treat or restore the Environment to substantially the condition the Environment was in prior to such release, spill or discharge of such PSE&G Hazardous Materials; and (ii) to prevent further or renewed releases, spills, discharges or spread of PSE&G Hazardous Materials.

8.6 PSE&G Ownership of Project. Should any conveyance of all or part of the Project Site by NJ TRANSIT, or any other transaction or event contemplated herein involving "closing operations" or a "change in ownership" or "transferring of ownership or operations" of the Project Site, subject the Project Site to the compliance requirements of the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq., and the rules and regulations promulgated thereunder ("ISRA"), NJ TRANSIT shall be responsible and shall promptly take all reasonable steps to comply therewith. NJ TRANSIT shall defend, indemnify and hold harmless PSE&G for any costs, expenses, losses or damages (including, without limitation, attorneys' fees and other costs of defense, fines, penalties and natural resource damages) arising from or associated with compliance or any failure to comply with ISRA as described in this Section. If NJ TRANSIT believes compliance with ISRA is not required, it shall supply to the other a written opinion of a licensed New Jersey attorney, in form and substance reasonably satisfactory to PSE&G, that compliance with ISRA is not required. The terms change in ownership, transferring ownership or operations, closing operations, Response Action Outcome, No Further Action Letter, Licensed Site Remediation Professional, Remediation Certification, and Remediation Funding Source, as used herein, shall have the meanings given to them under ISRA and/or N.J.A.C. 7:26B-1.3 or 7:26B-3.4.

ARTICLE IX

TAXES

9.1 Taxes. The Parties acknowledge and agree that PSE&G will apply for a private letter ruling from the Internal Revenue Service (the "IRS") to determine that PSE&G is not liable for federal income taxes due to the receipt of the NJ TRANSIT Contribution to the Project (the "PLR"). NJ TRANSIT will cooperate with PSE&G in the preparation and prosecution of such filing. During the pendency of the IRS ruling on the PLR, the Joint Development Team will proceed with the design phase of the Substation Project and purchase of long lead item

equipment or materials, but PSE&G will not commence physical construction of the Substation Project until such time as a PLR is issued in a form acceptable to PSE&G concluding that income tax is not required for the NJ TRANSIT Contribution or NJ TRANSIT provides PSE&G Written Notice that (i) the PLR is acceptable and NJ TRANSIT will pay the required federal income tax; or (ii) the NJBPU has approved an additional investment by PSE&G to offset the federal income tax required to be paid by NJ TRANSIT. If the PLR is unacceptable to NJ TRANSIT and NJ TRANSIT decides not to proceed with the Substation Project, NJ TRANSIT shall have the right to terminate the Agreement upon Written Notice to PSE&G. NJ TRANSIT shall provide Written Notice of its determination upon resolution of the matter at the NJBPU in accordance with the Stipulation. Upon receipt of Written Notice that the Substation Project will proceed, the Joint Development Team will, if necessary, update the Project Schedule and Estimated Project Budget to take into consideration any delays in obtaining a PLR acceptable to NJ TRANSIT. Upon Written Notice of termination, NJ TRANSIT will be obligated to pay PSE&G, on demand, all Project Costs incurred by PSE&G before and after the date of termination of this Agreement.

9.2 **Tax Payments.** Until such time as a PLR is issued in a form acceptable to PSE&G concluding that income tax is not required to be paid for the NJ TRANSIT Contribution, the NJ TRANSIT Contribution shall be increased to include the income tax amount assessed against such contributions. If a PLR is issued in a form acceptable to PSE&G concluding that income tax is not required to be paid for the NJ TRANSIT Contribution, PSE&G shall apply such tax amounts received from NJ TRANSIT to NJ TRANSIT's portion of Project Costs.

ARTICLE X

OPERATIONS AND MAINTENANCE PROTOCOLS

10.1 **Prioritization of Substation Project.** In the event PSE&G is required to implement PSE&G's System Restoration Plan, pursuant to PJM Manual 36, to restore power from the bulk electric system to the Substation Project, such restoration will be considered a high priority load after critical loads are restored. If during this period of restoration NJ TRANSIT notifies PSE&G that Substation Project requires repair for the purposes of operating the TRANSITGRID such repair will be given, by PSE&G, the same priority as critical loads second in priority to other critical loads required for emergency services or public health and safety. The coordination required between PSE&G and NJ TRANSIT in the isolation or restoration of the Substation Project necessary to protect against adverse system impacts will be described in the Final Operations Protocols Document.

10.2 **NJ TRANSIT's PJM Interconnection Requirements.** NJ TRANSIT has been awarded a \$409,764,814 grant from the Federal Transit Administration for NJ TRANSITGRID, an electrical microgrid capable of supplying power during storms or other times when the centralized power grid is compromised. NJ TRANSIT, at its sole cost and expense, shall comply with PJM's interconnection procedures and make such applications to PJM as may be necessary to interconnect NJ TRANSIT's micro-grid (to which the Substation Project will be connected) within the PJM Regional Transmission Organization. PJM's interconnection

requirements are not part of the Substation Project. PSE&G will provide to NJ TRANSIT the same support provided to third parties pursuing a PJM interconnection queue study per PJM Tariff rules. NJ TRANSITGRID's interconnection study and construction of the interconnection will be the subject of a separate PJM interconnection agreement entered into by the Parties at a later date.

10.3 **FERC/NERC Compliance.** PSE&G shall be responsible for all operational compliance requirements with FERC and NERC for the Substation Project. PSE&G shall notify NJ TRANSIT of any NERC or other operational compliance obligations that require cooperation with respect to the Substation Project. NJ TRANSIT will cooperate with PSE&G to comply with NERC requirements applicable to the Substation Project.

ARTICLE XI

INSURANCE

11.1 **Insurance Requirements.** PSE&G and NJ TRANSIT shall at all times carry and maintain the insurance coverage described in Schedule I.

ARTICLE XII

REPRESENTATIONS AND WARRANTIES

12.1 **NJ TRANSIT Representations and Warranties.** NJ TRANSIT hereby represents and warrants as follows:

12.1.1 **Good Standing.** NJ TRANSIT is a body corporate and politic duly organized, validly existing and in good standing under the laws of the State of New Jersey.

12.1.2 **Authority.** NJ TRANSIT has the right, power and authority to enter into this Agreement, to become a Party thereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of NJ TRANSIT, enforceable against NJ TRANSIT in accordance with its terms, except as the enforceability thereof may be limited by, applicable bankruptcy, insolvency, reorganization or other similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at Law).

12.1.3 **No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws, operating agreement or similar agreement, of NJ TRANSIT, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon NJ TRANSIT or any of its assets.

12.1.4 **NJ TRANSIT Contribution to Project Costs.** Except as provided in Section 7.1.2(a), NJ TRANSIT represents that it has no knowledge that the NJ TRANSIT

Contribution is subject to any conditions (required by Law or otherwise) or approvals of Governmental Entities. The source of funds to pay NJ TRANSIT's portion of the Project Costs will be from funds of the State of New Jersey, insurance proceeds, or proceeds from bonding or other revenue received by NJ TRANSIT. Any funds to which NJ TRANSIT has knowledge that such funds are subject to federal requirements shall not be used as part of NJ TRANSIT's Contribution. The Parties acknowledge that this Agreement is a utility Agreement and that PSE&G is not a construction contractor nor is PSE&G providing construction services to NJ TRANSIT. NJ TRANSIT represents that it has no knowledge that the NJ TRANSIT Contribution would subject PSE&G to comply with any Laws in addition to those Laws applicable to PSE&G if PSE&G were to use its own funds to complete the Project rather than a portion of NJ TRANSIT's funds. In the event that the NJ TRANSIT Contribution is subject to any conditions (required by Law or otherwise) or approvals of Governmental Entities and such conditions or approvals result in any Claims against PSE&G or PSE&G incurring any Losses, NJ TRANSIT shall indemnify, defend and hold harmless PSE&G from and against any such Claims and Losses.

12.1.5 **Appropriations.** NJ TRANSIT shall take all steps necessary to ensure that it budgets, appropriates, and seeks approval for sufficient funds to enable NJ TRANSIT to timely pay Project Costs (including the Advance Payment and Additional Advance Payments) when due in order to maintain the then applicable Project Schedule.

12.2 **PSE&G Representations and Warranties.** PSE&G hereby represents and warrants as follows:

12.2.1 **Good Standing.** PSE&G is a corporation, validly existing and in good standing under the laws of the State of New Jersey.

12.2.2 **Authority.** PSE&G has the right, power and authority to enter into this Agreement, to become a Party thereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of PSE&G, enforceable against PSE&G in accordance with its terms, except as the enforceability thereof may be limited by, applicable bankruptcy, insolvency, reorganization or other similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at Law).

12.3 **No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of PSE&G, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon PSE&G or any of its assets.

ARTICLE XIII

DISPUTES

13.1 The Parties agree to cooperate in resolving any claims, controversies or disputes that may arise out of or relate to this Agreement that cannot be resolved by the Joint Development Team and were timely raised and documented pursuant to Section 3.8.4 and

3.10.7 respectively (collectively, "Dispute" or "Disputes") in accordance with Sections 13.2 and 13.3 commencing an action at law or in equity, to the extent such actions are expressly permitted as provided herein. PSE&G shall not stop or delay any portion of the Work in any way during the pendency of any Dispute, except as otherwise set forth in this Agreement.

13.2 Negotiations and Dispute Resolution.

13.2.1 The Parties shall endeavor in good faith to resolve any Dispute promptly by negotiations. The Parties agree that their respective Designated Representatives identified in the Index of Designated Representatives, or another senior representative designated by such Party, shall as soon as possible, but no later than two (2) Business Days after receipt of a Written Notice of Dispute, either meet in person or telephonically to discuss and attempt to resolve the Dispute.

13.2.2 If the Designated Representatives, within the time period reasonably required to avoid or mitigate the effect of the Dispute, fail to reach resolution under Section 13.2.1, then each Party shall refer the Dispute to the senior executives for each Party identified initially in the Index of Designated Representatives ("Dispute Notice"). The senior executives shall either meet in person or telephonically as soon as possible, but no later than four (4) Business Days after the date of the Dispute Notice and attempt to resolve the Dispute.

13.2.3 In the event that the Parties do not resolve a Dispute as to Disputed Costs in accordance with Sections 13.2.1 or 13.2.2 within the time period identified, either Party may only refer such Dispute to the NJBPU in accordance with Section 13.2.4.

13.2.4 For the purpose of any proceeding under this Section or before any other Governmental Entity or arbitrator, each Party shall be confined in such proceeding to the documentation and evidence that NJ TRANSIT delivered by Written Notice pursuant to Section 3.8.4 or in the case of PSE&G, that PSE&G has delivered by Written Notice pursuant to Section 3.10.7.

13.2.5 Any Dispute as to any matter other than Disputed Costs that is not resolved in accordance with Sections 13.2.1 or 13.2.2 within the time period identified shall be resolved by binding arbitration pursuant to Section 13.3.

13.3 Arbitration. In the event that the Dispute concerns claims other than Disputed Costs, such Dispute shall be determined by binding arbitration as follows:

13.3.1 The arbitration shall be in accordance with the CPR Rules for Non-Administered Arbitrations ("CPR Rules") then currently in effect, except to the extent such rules are inconsistent with the terms of this Agreement, in which case the provisions of this Agreement shall govern. The arbitration shall be conducted by one arbitrator (the "Arbitrator").

13.3.2 Notwithstanding anything to the contrary in this Agreement or in the CPR Rules, the Parties agree: (1) the Arbitrator shall be bound by substantive principles of New

Jersey Law; and (2) the Arbitrator shall decide all matters based upon the record created contemporaneously with the Dispute.

13.3.3 The Arbitrator shall have the discretion to order a limited prehearing exchange of information by the Parties, if determined by the Arbitrator to be necessary. The Parties hereby agree timely to produce all such information as ordered by the Arbitrator.

13.3.4 The site of any arbitration brought pursuant to the terms hereof shall be at a location mutually agreed upon by the Parties in Essex County, New Jersey.

13.3.5 The Arbitrator's award of damages shall have no authority to award damages other than the prevailing Party's damages specifically recoverable under and subject to the liability limitations provided in this Agreement. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16.

13.4 **Stop Orders.** NJ TRANSIT and PSE&G acknowledge that NJ TRANSIT, or certain other governmental agencies in the exercise of their jurisdiction, may in certain instances have the authority to issue a "stop-order" for the that portion of the Substation Project specifically impacted by the issue of concern in Section 13.4(a). The Parties hereto recognize and acknowledge that any such "stop-order" could have a significant adverse effect on the Project Schedule and in addition to delay, could result in increased Project Costs and/or other material unanticipated repercussions. Accordingly, NJ TRANSIT's ability to issue a "stop-order" to the PSE&G shall strictly adhere to the following guidelines and be limited to the only the following:

(a) A "stop-order" shall commence only after receipt of Written Notice by PSE&G's Representative in accordance with the provisions of Section 13.4(b). Reasons for issuance of a "stop-order" shall be strictly limited to: (i) PSE&G's refusal to adhere to a material term of the PSE&G Management Procedures; (ii) PSE&G's refusal to adhere to NJ TRANSIT's standards with respect to the 55kV or below portion of the Substation Project that are more stringent than PSE&G's design and construction standards and comply with Good Utility Practice; (iii) failure of PSE&G to follow the Site Security Plan; and (iv) a then present unsafe condition within the Work Zone, which if not immediately remedied poses a significant and immediate threat to the health, life or physical safety or security of the individuals utilizing the MMC/ROC for rail and public transit AND for which appropriate precautions are not being taken or implemented pursuant to the terms of this Agreement.

(b) If one of the conditions identified in Section 13.4(a)(i) through and including (iv) is present, NJ TRANSIT shall provide PSE&G Written Notice of the condition and the scope of the stop-order with regard to the Substation Project and PSE&G shall have the opportunity to take Reasonable Efforts to correct the condition. If PSE&G does not make Reasonable Efforts to correct the condition, NJ TRANSIT shall have the right to deliver the aforementioned "stop-order" and require that the portion of the Substation Project impacted by the subject of the "stop-order" be suspended until such time as the condition is remedied. The "stop-order" shall specify in reasonable detail the reason for such issuance and what steps need to be taken in order to remedy the condition, which steps must be in accordance with Good

Utility Practice. To the extent the steps required by NJ TRANSIT to remedy the condition cannot be effectuated by PSE&G despite PSE&G's Reasonable Efforts, provided that the condition is a discrete condition and will not otherwise materially impact the execution of the Substation Project, PSE&G shall have the right to notify NJ TRANSIT that PSE&G elects to amend or modify the Project Execution Plan to delete the portion of Substation Project impacted by the "stop-order" and proceed with construction of the Substation Project.

13.4.2 The stop-order shall have no impact on any areas of the Substation Project or this Agreement except as set forth in the stop-order.

13.5 PSE&G shall have the right to suspend the Project whenever, in its judgment, safety-related concerns could result in personal injury, death, occupational disease, or damage to property. Furthermore, PSE&G may request that any Persons, including any NJ TRANSIT Designated Representatives be removed or barred from the Project Site or Work Zone if such Persons are not complying with safety requirements or are otherwise not compliant with the Project Site Safety Plan or PSE&G Management Procedures.

ARTICLE XIV

BREACH AND DEFAULT

14.1 Breach and Default.

14.1.1 Breach. A material violation of any term or condition of this Agreement by any Party shall constitute a breach of this Agreement ("Breach").

14.1.2 Notice of Breach. In the event of a Breach, a Party not in Breach of this Agreement shall give Written Notice of such Breach to the breaching Party. Such Written Notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

14.1.3 Cure and Default. A Party that commits a Breach and does not take steps to cure the Breach pursuant to Section 14.1.4 shall be in default of this Agreement ("Default").

14.1.4 Cure of Breach. The breaching Party shall: (i) cure a Breach for NJ TRANSIT's failure to pay appropriated funds within three (3) Days from receipt of the Written Notice of Breach; (ii) cure the Breach within thirty (30) Days from the receipt of the Written Notice of Breach or other such date as determined by the non-breaching Party; or (iii) if the Breach (other than a payment Breach, which must be cured within three (3) Days of Written Notice) cannot be cured within thirty (30) Days but may be cured in a manner that ensures that the non-breaching Party is not materially harmed by such Breach, within such thirty (30) Day time period, commence in good faith steps that are reasonable and appropriate to cure the Breach and thereafter diligently pursue such action to completion within a time period acceptable to the non-breaching Party.

14.1.5 **Remedies.** Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) pursue the Dispute resolution procedures provided for in the Agreement to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (ii) suspend performance hereunder; and (iii) exercise such other rights and remedies as it may have under this Agreement, in equity or at Law.

14.1.6 **Remedies Cumulative.** No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at Law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

14.1.7 **Waiver.** Any waiver at any time by any Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.

ARTICLE XV

TERMINATION

15.1 **Termination.**

15.1.1 **Termination by Default.** A Party may terminate this Agreement after the Defaulting Party fails to cure a Default as provided under Article 14 by providing Written Notice of termination to the Defaulting Party.

15.1.2 **Additional Grounds for Termination.** In addition to other rights to terminate as provided in this Agreement, a Party may also terminate this Agreement upon the occurrence of the following events: (i) a Change in Law that materially and adversely affects a Party's rights and/or obligations under this Agreement which the Parties are unable to rectify notwithstanding their good faith negotiations; (ii) the failure to achieve all conditions subsequent set forth in Section 2.1.1 within 180 Days of the Effective Date; (iii) the failure of any representation or warranty of a Party set forth in Article 12; and (iv) NJ TRANSIT's failure to appropriate, authorize, continue to authorize or approve funds to pay Project Costs pursuant to Section 7.1.2(a).

15.1.3 **PSE&G's Right to Recover Costs Upon Termination.** In the event that (i) this Agreement is terminated by either Party for any reason other than a termination due to a Breach by PSE&G; or (ii) the Substation Project is abandoned or terminated for any reason other than a Breach by PSE&G, PSE&G shall be entitled to recover from NJ TRANSIT Project Costs incurred by PSE&G. In the event that the Substation Project is abandoned by PSE&G and such abandonment is determined by the Arbitrator to be a Breach by PSE&G, the

Arbitrator shall also determine what amount, if any, of the NJ TRANSIT Contribution actually paid to PSE&G by NJ TRANSIT is to be refunded to NJ TRANSIT.

15.1.4 PSE&G's Right to Access the Project Site Upon Termination.

Following the removal of PSE&G's materials and equipment from the Substation Project Work Zone, PSE&G's rights to access the Project Site as provided in the Substation Easement Agreement shall terminate in accordance with the terms of the Substation Easement Agreement.

ARTICLE XVI

LIABILITY AND INDEMNITY

16.1 Liability.

16.1.1 **PSE&G's Liability.** For the purposes of this Agreement, PSE&G's liability to NJ TRANSIT shall be limited to Losses associated with third-party Claims for which PSE&G has specifically indemnified NJ TRANSIT under Section 16.1.3 of this Agreement.

16.1.2 PSE&G, PSE&G'S AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES, SHAREHOLDERS, OFFICERS, MANAGERS, DIRECTORS, EMPLOYEES AND SUBCONTRACTORS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES, DAMAGES, COSTS, OR EXPENSES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST OR REDUCED PROFITS, REVENUES, EFFICIENCY, PRODUCTIVITY, BONDING CAPACITY, OR BUSINESS OPPORTUNITIES, OR INCREASED OR EXTENDED OVERHEAD, OPERATING, MAINTENANCE, OR DEPRECIATION COSTS AND EXPENSES).

16.1.3 **PSE&G Indemnity.** PSE&G hereby agrees to defend, indemnify, save and hold harmless NJ TRANSIT and its directors, managers, officers, employees and agents (each a "NJ TRANSIT Indemnified Person") from and against any and all Losses, asserted against or incurred by any NJ TRANSIT Indemnified Person in connection with a third-party Claim by any Person or Governmental Entity in any way relating to, or arising out of, or resulting from the following: (i) the death or bodily injury to Persons, to the extent caused by the negligent act of omission of PSE&G or any Representative of PSE&G; (ii) injury or damage to property, destruction of tangible property or the use thereof, to the extent caused by any negligent act or omission, of PSE&G or any Representative of PSE&G; (iii) PSE&G Hazardous Materials; or (iv) PSE&G's or any PSE&G Representative's failure to comply with Environmental Laws during the Work. This indemnification shall survive the expiration or sooner termination of this Agreement.

16.1.4 **NJ TRANSIT Indemnity.** NJ TRANSIT hereby agrees to defend, indemnify, save and hold harmless PSE&G, PSE&G's Affiliates and their respective owners, directors, managers, officers, employees and agents (each, a "PSE&G Indemnified Person")

from and against any and all Losses, asserted against or incurred by any PSE&G Indemnified Person in connection with a third-party Claim by any Person or Governmental Entity in any way relating to, or arising out of, or resulting from the following: (i) the death or bodily injury to Persons, to the extent caused by the negligent act of omission of NJ TRANSIT or any Representative of NJ TRANSIT; (ii) injury or damage to property, destruction of tangible property or the use thereof, to the extent caused by any negligent act or omission, of NJ TRANSIT or any Representative of NJ TRANSIT; (iii) Non-PSE&G Hazardous Materials; (iv) NJ TRANSIT's or any NJ TRANSIT Representative's failure to comply with Environmental Laws. This indemnification shall survive the expiration or sooner termination of this Agreement.

ARTICLE XVII

FORCE MAJEURE

17.1 **Force Majeure.** For the purpose of this section, an event of force majeure shall mean any cause beyond the control of the affected Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by a Governmental Entity or by military, or lawfully established civilian authorities, which in any foregoing cases, by exercise of due diligence, it has been unable to overcome. An event of force majeure does not include: (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remedial causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; (iii) economic hardship of an affected Party; or (iv) in the case of NJ TRANSIT, the failure to budget or appropriate funds necessary to pay Project Costs. An event of force majeure shall not relieve NJ TRANSIT of its obligation to pay Project Costs pursuant to Article 7.

17.2 **Notice.** A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party by Written Notice within a reasonable time after the occurrence of the cause relied on.

17.3 **Duration of Force Majeure.** A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any deficiency or failure to perform any obligation under this Agreement to the extent that such failure or deficiency is due to Force Majeure. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt Written Notice thereof to the other Party.

ARTICLE XVIII**ASSIGNMENT**

18.1 **Assignment.** Neither Party shall assign its rights or obligations under this Agreement or any part thereof to any other Person or Entity without the prior written consent of the other Party; provided, however, PSE&G may assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of its assets, and/or a merger or by operation of Law. Any purported assignment or delegation in violation of this Agreement shall be null and void.

ARTICLE XIX**CONFIDENTIALITY**

19.1 **Confidentiality.** Information, data and records produced by the Parties under this Agreement shall be deemed confidential and proprietary. The Parties agree to accept, receive, or hold information, whether in oral, written, or physical form, that is confidential or proprietary, in the manner set forth in the NDA, the terms of which shall survive any termination or expiration of this Agreement. PSE&G expressly acknowledges that NJ TRANSIT is a public agency subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"), and the common law Right to Know. OPRA is generally construed in favor of granting public access to documents maintained in the course of its official business. In the event NJ TRANSIT receives an OPRA request concerning the Substation Project, NJ TRANSIT shall contemporaneously provide PSE&G Written Notice of such OPRA request, which shall include a copy of the OPRA request, and the timeframe by which NJ TRANSIT must reply in accordance with applicable Law.

ARTICLE XX**SURVIVAL**

20.1 **Survival of Rights.** The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. All provisions of the Agreement for the limitation of or protection against loss or liability of a Party, including the Environmental and Liability and Indemnity provisions in Articles 8, 12 and 16, and the payment obligations of the Parties, including NJ TRANSIT's obligations set forth in Section 3.8.5 and Articles 7 and 15, shall survive termination, expiration, or cancellation of this Agreement.

ARTICLE XXI

MISCELLANEOUS

21.1 **Publicity.** Neither Party shall issue any press releases, hold press conferences, or make or issue any public communications of any kind regarding the Agreement, its execution or delivery thereof, or the Project, except as may be required for the execution of the Project or as may be required by Law, without the prior written consent of the other Party.

21.2 **Notices.** Any notice or request made to or by any Party regarding this Agreement shall be in writing and made by hand delivery or reputable overnight courier to the addresses set forth below:

If to PSE&G:

PSEG Services Corporation
80 Park Plaza, T-13
Newark, NJ 07102
Attn: Senior Vice President, Delivery
Project Construction

With a copy to:

PSEG Services Corporation
80 Park Plaza, T-5
Newark, NJ 07102
Attn: Vice President
and Deputy General Counsel

If to NJ TRANSIT:

NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105
Attn: Assistance Executive Director,
Capital Planning & Programs

With a copy to:

NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105
Attn: Board Secretary

Written Notices delivered by hand or by overnight delivery service shall be effective upon the date of delivery if on a Business Day or, if not on a Business Day, on the next succeeding Business Day.

21.3 **Negotiated Terms.** The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement is not to be construed in favor of, or against, any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

21.4 **No Partnership.** Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

21.5 **Headings.** The Article and Section headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

21.6 **Interpretation.** Wherever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

21.7 **Severability.** Each provision of this Agreement shall be considered severable and if for any reason any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated, and such invalid, void or unenforceable provision shall be replaced with valid and enforceable provision or provisions which otherwise give effect to the original intent of the invalid, void or unenforceable provision.

21.8 **Entire Agreement.** The Agreement and those schedules, exhibits and other documents expressly incorporated herein, including PSE&G's Tariff, Stipulation and the NDA, constitute the full, complete, and only agreement between the Parties hereto with respect to the Project. To the extent there are any conflicts between the terms and conditions of this Agreement and any Schedules attached hereto, the terms and conditions of this Agreement shall control. This Agreement supersedes any course of performance, course of dealings, usage of trade, previous agreements, representations, and understandings, either oral or written. No terms, conditions, agreements, representations, understandings, course of performance, course of dealing, or usage of trade purporting to modify, vary, supplement, explain, or amend any provisions of this Agreement shall be effective unless in writing, signed by a representative of each Party authorized to amend this Agreement.

21.9 **Further Assurances.** Each Party hereby agrees that it shall hereafter execute and deliver such further instruments, provide all information and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

21.10 **Counterparts.** This Agreement may be executed in multiple counterparts to be construed as one effective as of the Effective Date.

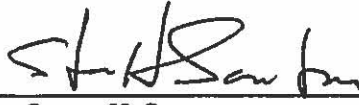
21.11 **Governing Law and Waiver of Jury Trial.** The Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without reference to the principles of conflicts of laws. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.


[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date by their respective authorized officials.

NEW JERSEY TRANSIT CORPORATION

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: 
Name: Steven H. Santoro
Title: Executive Director

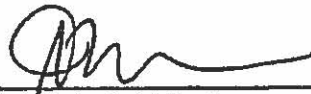
By: 
Name: Kim C. Hanemann
Title: Senior Vice President
Delivery Projects and Construction

DATED: 11/6/2017

DATED: 11/6/2017

This has been approved as to form on behalf of NJ TRANSIT by:

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Aziz O. Nekoukar
Deputy Attorney General

DATED: 11/6/2017

Appendix I
Defined Terms

All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement or the attached Schedules.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

“Business Day” means any Day other than a Saturday, Sunday, or other Day that constitutes a New Jersey State holiday.

“Change in Law” means a change in applicable Law that occurs following the Effective Date of this Agreement that modifies or changes the NJBPU order approving the Stipulation and Agreement.

“Claim(s)” means any and all claims, complaints, suits, proceedings, demands, disputes, actions, or allegations of any kind, whether just or unjust.

“Day” means a calendar day.

“Designated Representatives” shall mean those individuals designated by a Party as set forth on Schedule G, that will have such responsibilities as to matter as set forth in the Agreement.

“Entity” means a corporation, limited liability company, partnership (including a general partnership, joint venture, limited partnership, limited liability partnership or partnership association), trust (including a business trust), estate, Governmental Entity or any other entity.

“Environment” means ambient air, surface water, groundwater, land surface and subsurface strata, and natural resources.

“Environmental Claim” means any Claim relating to, or in connection with, the Project Site or the Substation Project - including any Claim for Losses, personal injury, real or personal property damage, or natural resource damage - arising directly or indirectly out of any violation or alleged violation of, or noncompliance or alleged noncompliance with, any Environmental Law or Remediation, or any pollution, nuisance, contamination, adverse effect upon the Environment or public health or safety, including the presence, suspected presence, Release, or threatened or suspected Release of any Hazardous Material either on, at, in, under, or from the Project Site or any real property that is adjacent to or in the vicinity of the Project Site.

“Environmental Laws” means any applicable federal, state, local or other law, statute, ordinance, rule, regulation, permit, judgment, order, decree, license, or other binding requirement of, or binding agreement with, any Governmental Entity, now or hereafter in effect and, in each case, as amended from time to time, relating to or governing the presence, Release, or threatened Release of Hazardous Material, the protection of natural resources, health, safety or the Environment, or the management, manufacture, use, processing, sale, generation, handling, labeling, distribution, transportation, treatment, storage, disposal, Remediation, disclosure, or notice of the presence, Release or threatened Release of Hazardous Material, including, without limitation, (a) the Atomic Energy Act, 42 U.S.C. § 2011 et seq., as amended, (b) the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended (“CAA”), (c) CERCLA, (d) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., as amended, (e) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., as amended, (f) the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended (“FWPCA”), (g) the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq., as amended (“HMTA”), (h) the Low-Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b et seq., as amended (“LLRWPA”), (i) the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., as amended (“NWPA”), (j) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as amended (“OSHA”), (k) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended (“RCRA”), (l) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended, (m) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended (“TSCA”), (n) the substantive equivalent of any of the foregoing in any state or foreign jurisdiction, (o) ISRA, (p) the Spill Act, and (q) NJDEP’s Technical Regulations.

“Environmental Permits” means all Permits required to be obtained in relation to the Substation Project or the Project Site pursuant to Environmental Laws.

“Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.

“Governmental Entity” means a federal, state, local or foreign governmental authority; a state, province, commonwealth, territory or district thereof; a county or parish; a city, town, township, village or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, authority, board, department, office, commission, committee, council or other administrative body of any of the foregoing, including the NJBPU; and any court or other judicial body. For purposes of this Agreement, the term Governmental Entity does not include NJ TRANSIT or any Affiliate of NJ TRANSIT.

“Hazardous Materials” means any chemical, material or substance, regardless of its form or nature, defined as or included in the definition of “hazardous substances,” “hazardous wastes,”

“hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “solid waste” or words of similar import under any applicable Environmental Laws.

“Historic Fill” shall have the meaning set out in the NJDEP’s *Historic Fill Material Technical Guidance* (Version 2.0, April 29, 2013), as amended.

“Law(s)” or “laws” means any act, statute, law, ordinance, rule, regulation, requirement, order, directive, permit, legislative or administrative action, decree, judgment, order, code, standard, constitution, or charter of any federal, state, local, municipal, county, agency, commission, or court having jurisdiction over the Parties, Project, Project Site, or any other Persons, including Environmental Laws.

“Loss(es)” means any loss, liability, lien, damage, judgment, fine, penalty, fee, or expense (including reasonable attorneys’ fees, court costs, and disbursements).

“Moody’s” means Moody’s Investors Service, Inc. or its successor.

“NJBPU” means the New Jersey Board of Public Utilities, its President and Commissioners, bureaus, divisions and sub-divisions and its regulatory staff.

“NDA” means that certain Confidentiality and Non-Disclosure Agreement signed by NJ TRANSIT on January 28, 2014 and entered into by and between the Parties, which is attached hereto as Schedule K.

“NJ TRANSIT Environmental Reports” the documents entitled “NJ TRANSIT SUBSTATION SUPER STORM SANDY RECOVERY PROGRAM Hazardous Materials Assessment Report - Meadows Maintenance Complex” dated May 2015; and, “NJ TRANSIT SUBSTATION SUPER STORM SANDY RECOVERY PROGRAM Limited Site Investigation Report” dated February 13, 2015.

“NJ TRANSIT Fiscal Year” means July 1 through June 30.

“Person” means any Entity or natural person.

“Project Contractors” means the contractors of any tier retained by PSE&G in connection with the Substation Project and NJ TRANSIT in connection with the NJ TRANSIT Parking Project.

“Project Costs” means any and all costs, fees and expenses of the Substation Project, including, but not limited to, design and engineering costs, costs associated with permits and any other approvals required by Governmental Entities, Claims and Losses, property acquisition costs including any costs incurred by PSE&G to access the Project Site or properties adjacent to the Project Site, construction and equipment costs, costs associated with environmental tests and studies and costs to excavate and dispose of soil and groundwater as necessary to complete the Substation Project, any costs incurred by PSE&G during a work-stoppage or suspension of the Substation Project and any costs incurred by PSE&G in preparing, filing and prosecuting the

PLR. Project Costs shall include NJ TRANSIT Ancillary Costs (as defined in the Stipulation) and Substation Project Termination Costs. Project Costs do not include any costs associated with NJ TRANSIT's response to a Reportable Event involving Non- PSE&G Hazardous Materials.

"Parking Project Site Easement Agreement" means that certain Parking Project Site Easement Agreement as described in Section 2.1(b).

"Project Schedule" means the preliminary construction schedule for the Substation Project attached hereto as Schedule H.

"Project Site" shall mean the real property upon which the Substation Project shall be constructed, which is generally shown on the drawing attached hereto as Schedule C. The Project Site will be more particularly delineated during the development of the Substation Project, as mutually agreed upon by the Parties.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., as amended.

"Reasonable Efforts" means such efforts as are consistent with ensuring the timely and effective design and construction of the Substation Project in a manner, which ensures that the Substation Project costs are prudent and that once the Substation Project is placed in service, meets the requirements of the Substation Project and is consistent with Good Utility Practice.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing, migration or placement into or contamination of, the Environment.

"Remediation" means any assessment, examination, analysis, test, monitoring, investigation, containment, cleanup, response or remedial action, removal, mitigation, restoration, storage, transportation, treatment, disposal, RCRA closure activities or other activity with respect to or in response to any Release of any Hazardous Material, including, without limitation, any disclosure or notice required thereunder or arising therefrom.

"Reportable Event" means the discovery of a discharge as defined at N.J.A.C. 7:1E-1.6. The discovery of Historic Fill, shall not constitute a Reportable Event.

"Representatives" means, as applicable, the Parties' respective Designated Representatives, NJ TRANSIT's Construction Representatives, the NJ TRANSIT Substation Project Oversight Advisor and the PSE&G Project Contractors.

"Substation Easement Agreement" means that certain Substation Easement Agreement as described in Section 2.1(b).

"Substation Project Termination Costs" shall mean the actual, necessary, reasonable, and verifiable expenses which may be incurred as the direct result of such termination.

“S&P” means Standard & Poor’s Financial Services LLC or its successor.

“Tariff” means PSE&G’s Tariff for Electric Service, effective June 7, 2010, as may be amended.

“Work” means all work performed by PSE&G and PSE&G’s Project Contractors with respect to the Substation Project, including, but not limited to, all design and construction work.

“Work Rules” shall mean the Work Rules attached hereto as Schedule F.

“Work Zone” shall mean those designated areas of the Project Site segregated by fences or other physical barriers in accordance with the Project Execution Plan within which improvements may be constructed, placed or located.

“Written Notice” means a written communication signed by a duly authorized representative and delivered in accordance with Sections 21.2.

Schedule A

Substation Project Description

The Project will consist of a new PSE&G 230 kV Substation located at Kearny, New Jersey (for purposes of this Schedule A, "Substation"). The Substation will be incorporated into PSE&G's system and will, in part, be utilized to provide NJ TRANSIT with High Tension Service under the PSE&G Tariff. NJ TRANSIT acknowledges it has reviewed that certain drawing entitled "Meadows Maintenance Complex Civil, Option 3 – Site Plan," which contains the details of the Substation but has not been included in this Agreement because such drawing contains confidential Critical Energy Infrastructure Information.

I. Substation Description

The Substation will consist of twelve (12) Gas Insulated Switchgear (GIS) breakers arranged in a four (4) bay breaker and half scheme, operated at 230 kV with an 80 kA short circuit rating. All GIS breakers will be housed in a hall (estimated size of 121 by 110 feet) with an accompanying control house (estimated size of 76 by 63 feet) suitable for housing all the necessary PSE&G protection equipment, AC distribution panel and low voltage switchgear, as well as DC batteries (Sized to meet all applicable Laws), chargers, and panels, etc. All line positions (eight (8)) will exit the hall via gas insulated bus (GIB) and be routed to the suitable location (exact length to be determined during the conceptual design phase of the Substation).

The Substation will include five (5) 230/55.2 kV, 20 MVA two phase traction power transformers. Each line-up will consist of a 230/55.2 kV transformer, a high-side dead tank 230 kV circuit breaker and disconnect switch along with PSE&G revenue meters. The low-side of each line-up will consist of a 230/55.2 kV transformer, a low-side dead tank circuit breaker and associated disconnect switches, feeding a newly constructed, as part of this project, NJ TRANSIT 55.2/27.6 kV East and West Traction Power Yard. The high-side connection of the five (5) 230/55.2 kV transformers will strategically be divided among two (2) 230 kV positions out of the 230 kV GIS Facility. The connections shall be designed such that the loss of one 230 kV line will not result in an interruption of power to the NJ TRANSIT 55.2/27.6 kV East and West Traction Power Yard PSE&G shall include infrastructure for installing temporary by-pass, AKA 'strain bus' type connections (or a similar engineering methodology acceptable to NJ TRANSIT) for implementing a temporary backup feed in the event that one of the 230 kV traction power bus feeds is disabled for an extended period of time. NJ TRANSIT will make all connections to existing NJ TRANSIT catenary power systems. NJ TRANSIT will facilitate and coordinate with PSE&G regarding necessary transfer of power, operational switching, outages, and other support activities. The new 55.2/27.6kV system is maintaining the same functionality and operations currently used by NJ TRANSIT.

PSE&G will also construct two (2) 230/13.2 kV, 45 MVA transformers (three (3) phase high and low-side connections). Each line-up will consist of a 230/13.2 kV transformer, a high-side dead tank 230 kV circuit breaker and disconnect switch. Each 230/13.2 kV transformer will have its own 230 kV line position in the 230 kV portion of the Substation. The 230/13.2 kV, 45 MVA transformers will serve a new 13.2 kV switchgear and associated control room to be installed by PSE&G in a newly constructed building adjacent to former Building 9. PSE&G will increase the new Substation's bus voltage to 13.2 kV in anticipation of a future unrelated NJTRANSIT upgrade of MMC distribution system. PSE&G will furnish and install two (2) 13.2/4.16 KV transformers and associated breakers, switches, protection, and controls to enable connection to existing Building 9 feeds. PSE&G will eliminate the 26.4 kV distribution circuits currently providing service and will remove associated equipment. NJ TRANSIT will facilitate outages and final connections between the new 13.2/4.16 kV transformer and the existing Building 9 switchgear that will remain in service temporarily pending implementation of NJ TRANSIT's future project.

NJ TRANSIT will provide back-up generation for the ROC and for NJ TRANSIT facilities. PSE&G will accommodate a 13.2kV connection point for backup generation and its associated distribution line, the location of the connection point to be agreed upon by the parties.

Per the PSE&G engineering and construction standards, all sensitive equipment including connections, indoor and outdoor, regardless of voltage class, and including the 55/27 kV traction power systems, shall be constructed/relocated at or above the 500-year (0.2%) annual base flood elevation for the Hackensack River, defined by previous NJ TRANSIT research as 13.6 feet (NAVD 1988).

II. Coordination of Construction of the Project

In order to complete the Project, PSE&G and NJ TRANSIT will be required to closely coordinate the sequence of construction of temporary facilities, deconstruction of replaced facilities and the construction, interconnection and commissioning of the new Substation. NJ TRANSIT will retain all salvage rights for retired equipment or the right to utilize retired equipment as system spares elsewhere in the NJ TRANSIT System. All salvaged equipment to be relocated off-site by NJ TRANSIT or PSE&G, at NJ TRANSIT's cost, which shall not be included in Project Costs and will be invoiced separately, to a storage area (to be determined).

The commissioning of the new Substation shall be in collaboration between NJ TRANSIT and PSE&G. NJ TRANSIT will retain or assign a commissioning agent with expertise in rail traction power systems for the low side equipment. This collaboration will include operational considerations such as switching and tagging.

The construction of the Switching Station will require that NJ TRANSIT vacate its parking lot located west of Building No. 9 depicted on the attached drawing. As such, NJ TRANSIT will reconfigure its parking lot to accommodate 350 parking spaces required for NJ TRANSIT's operations. The conceptual construction sequencing is as follows:

1. NJ TRANSIT has started the engineering and construction of its surface parking enhancements for its new parking lot with the understanding that PSE&G's construction requires NJ TRANSIT to vacate the property located west of Building No. 9, as depicted on the attached drawing. Additionally, NJ TRANSIT must coordinate with PSE&G on the new Parking Lot design to take into consideration the construction of the PSE&G 13.2kV cables and ductbanks connecting the 230/13k.2kV & 13.2/4.16kV transformers and 13.2kV switchgear of the new Building No. 9 to take into account the proposed new parking lot elevated grading.
2. PSE&G will ensure that the new Substation design and construction is configured, staged and phased so as to maintain adequate parking for MMC, ROC, and Infrastructure employees at all times, defined as a minimum of 350 available parking spaces; and will coordinate work with the NJ TRANSIT consultant designing the temporary and final parking facilities.
3. Upon NJ TRANSIT vacating the portion of the existing parking lot necessary for Substation construction, PSE&G will install a 230kV contingency substation designed to replicate the existing 230kV facilities and maintain continuous operation of the existing 55/27.6kV Traction Power Yard during construction. While not involved with this construction, existing Building 9 substation and its feeds must also remain in-service for the duration of this work.
4. Upon completion of the 230kV contingency substation, PSE&G will transfer the existing East Traction Yard to the contingency substation. Additionally PSE&G will procure a custom 55/27.6kV mobile contingency substation comprised of breakers, autotransformers, relays, and necessary equipment to install, which will be utilized on the Meadows Maintenance Complex side of the rail road tracks and transfer the existing West Traction Yard to this mobile switchgear. At this point the demolition of both the existing 230kV substation and West Traction Power yard will occur. According to the yet-to-be developed outage sequencing plan, this process and subsequent cut overs may cause both temporary transmission outages as well as periods of radial feed to the existing station. In order to efficiently address the outages, PSE&G will coordinate, with NJ TRANSIT, necessary transfer of power, outages, and other support activities, and accommodate scheduling same with NJ TRANSIT operations requirements, which may involve off-peak, overnight, or weekend outages of limited duration.

5. PSE&G will then begin construction of the 230kV GIS, New elevated West Traction Power Yard and the new 55.2kV Control house. Upon completion and energization of these facilities, the existing temporary feed for the West Traction Power Yard will be transferred to the new functioning West Traction Power Yard while the mobile will be used to temporarily support the East Traction Power Yard. The 230kV contingency station and the East Traction Power Yard will be demolished at this time. During these constructions sequences operational control of the various components will follow the new operational agreement being developed between PSE&G and NJ Transit.

6. Construction of the new elevated East Traction Power Yard and the new Building No. 9 portion of the Substation will begin. Additionally the installation of two (2) 55.2kV/12kV transformers will be completed in the 55.2kV Yard. Upon completion of the new East Traction Power Yard the mobile contingency will be removed from service and traction power service to NJ TRANSIT trains returned to service in the final configuration of the Switching Station. The new Building No.9 portion of the Substation will be commissioned including provision of two (2) 13kV feeds to PSE&G installed, NJ TRANSIT Operated 13.2kV/4.16kV transformers in place of existing 26.4kV/4.16 kV transformers and PSE&G distribution feeds. The remaining 13.2kV future feeds will be available for NJ TRANSIT's future design, construction and operation of cables over their proposed future utility bridge crossing the rail road tracks to the Meadows Maintenance Center including transfer of the Railway Operations Center (ROC) by NJ TRANSIT. The new Substation will be constructed with PSE&G revenue metering.

NJ TRANSITGRID REQUIREMENTS

PSE&G will incorporate into any design of the new Substation two dedicated line positions on two separate bus bays.

NJ TRANSIT will provide the design requirements for isolation and restoration of the new Substation relevant to the NJ TRANSITGRID. The Parties will jointly develop new Substation design requirements for an onsite power and station battery design capable of supporting prolonged operation in isolation of the Bulk Electric System including remote switching.

PSE&G will install bi-directional components that will allow for net metering at the new Substation.

During an event impacting electrical service, the NJ TRANSITGRID Central Power Plant will operate independently until NJ TRANSIT is notified by PSE&G that commercial power is restored.

NJ TRANSITGRID Central Power Plant powers traction and ancillary loads through the new Substation as applicable. The new Substation and Central Power Plant controls designs and operational agreements will facilitate power transmission and distribution through Mason during normal commercial power grid availability or solely to NJ TRANSIT traction and ancillary loads during a commercial grid outage by operation in isolation of the Bulk Electric System.

PSE&G will have SCADA control of the 230kV breakers and coordinate with NJ TRANSITGRID to remotely open the 230kV breakers to isolate NJ TRANSITGRID from the PSE&G Transmission System to allow NJ TRANSITGRID to serve NJ TRANSIT's needs only during an event impacting electric service. PSE&G will notify NJ TRANSIT when commercial power is to be restored. PSE&G will then coordinate with NJ TRANSITGRID to re-establish commercial power to the new Substation. PSE&G will ensure compliance with PJM requirements for grid operations, and advocate on NJ TRANSIT's behalf for these proposed operating scenarios. PSE&G will collaborate with NJ TRANSIT, including NJ TRANSIT's contractors, regarding the design of the control architecture. The Parties will jointly develop an operational protocol reflecting a high priority for service restoration. The Parties will jointly develop an operational protocol reflecting a mutually agreed upon schedule for the restoration of service.

PRELIMINARY OPERATIONS PROTOCOLS AND FINAL OPERATIONS PROTOCOLS.

Pursuant to Section 3.6(b) of the Agreement the Joint Development Team will develop the Preliminary Operations Protocols Document and Final Operations Protocols Document that will adhere to the general principle that NJ TRANSIT shall be responsible for the operations and maintenance for the portion of the Substation Project consisting of the 13.2 kV, 55kV, 27kV equipment and PSE&G shall be responsible for the operations and maintenance of the portion of the Substation Project consisting of the 230kV equipment.

Schedule B

NJ TRANSIT Parking Project

MMC Parking Improvements Project Overview

NJ TRANSIT's rail facility in Kearny, NJ is home to three separate rail operation components that share a common 360-space employee parking area that provides for:

- 1) Meadows Maintenance Complex (MMC)
- 2) Rail Operations Center (ROC)
- 3) Mason Substation

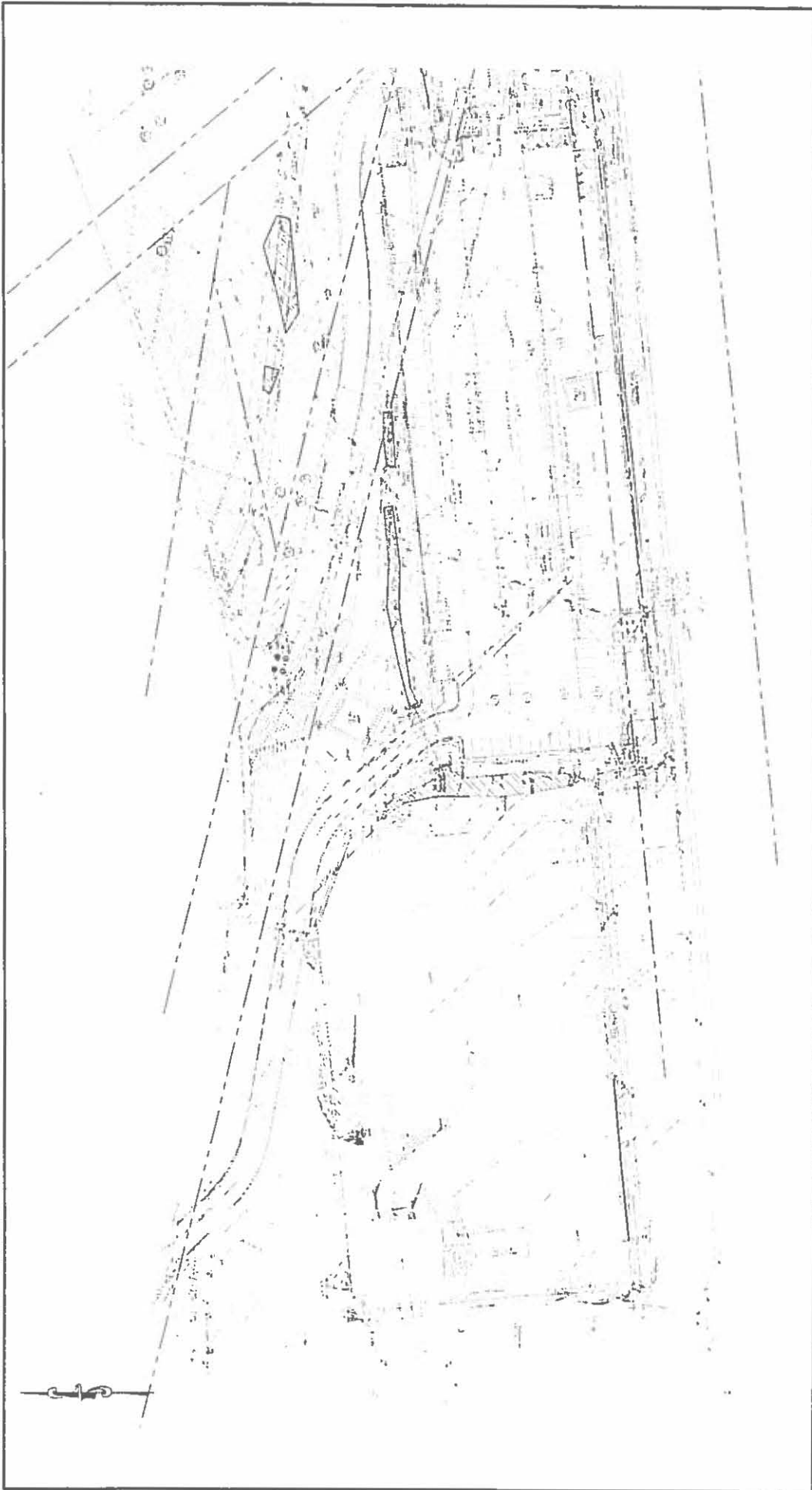
The MMC Parking Improvements Project will increase the lot capacity of the existing parking area and will provide for compliant barrier-free access to the existing elevator tower and pedestrian overpass to the rail complex. It will also meet with current NJDEP standards for stormwater management and water quality.

The reconfigured parking area will be expanded to the north of the current parking lot and the existing access driveways from the highway system will remain the same. The construction of the reconfigured lot includes low retaining walls due to grade changes, upgraded site lighting, and the addition of stormwater management controls due to the increase in impervious coverage.

Schedule C

Project Site

Attached

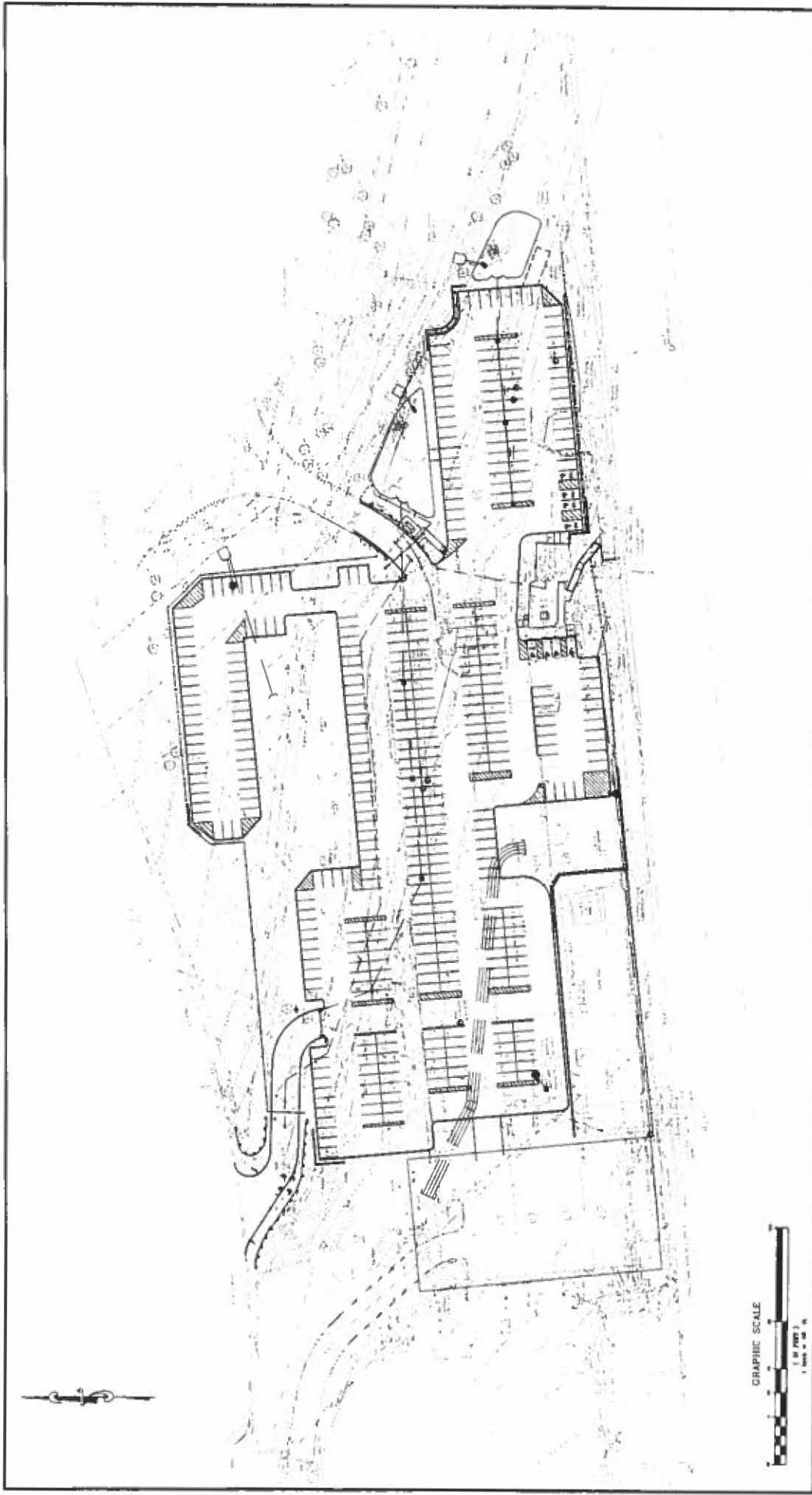


<h1 style="margin: 0;">NJ TRANSIT</h1>	CHRISTOPHER P. STABLE, P.A. CONSULTING ENGINEERS 317 W. 10th St. Newark, NJ 07102		REGISTERED PROFESSIONAL ENGINEER No. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100		IN ASSOCIATION WITH: Heco Engineering, Inc. Army S. Green Environmental Consultants, Inc.		PROJECT NO. 10/13/13	
	PROJECT TITLE: NJ TRANSIT PARKING IMPROVEMENTS TOWN OF KEARNY, HUDSON COUNTY, NJ		SHEET NO. 10/13/13		DATE: 10/13/13		EXISTING CONDITIONS	

Schedule D

Parking Project Site

Attached



NJ TRANSIT

CHRISTOPHER P. STABLE, P.A.
 CONSULTING ENGINEER
 Date: 05/14/16
 No. 04-16
 IN ASSOCIATION WITH
 Meco Engineering, Inc.
 Amy S. Green, Environmental Consultants, Inc.

REVISION	DATE	BY	REASON

APPROVED BY: [Signature]
 TITLE: [Title]
 DATE: 10/11/17

NJ TRANSIT
 MHC
 PARKING IMPROVEMENTS
 TOWN OF KEARNY
 HUDSON COUNTY, NJ

PROJECT SCHEMATIC

CONTRACT NO.	DATE
344-010	10/11/17
SCALE	

Schedule E

Appointees to Joint Development Team

PSE&G Appointees

Garan Gunn

Eileen Spanicciati

NJ TRANSIT Appointees

NJ TRANSIT's Assistant Executive Director, Capital Planning and Programs, who will appoint additional NJ TRANSIT members to the Joint Development Team.

Schedule F
Work Rules

CONTENTS

Defined Terms.

General Provisions.

Restrictions on Work.

Planning of the Work.

Site Security.

Site Safety.

Site Cleanliness and other Related Conditions.

Temporary Structures; Storage of Equipment and Materials.

Shutdowns.

1. **Defined Terms and Scope.**

1.1 **Defined Terms.** Capitalized terms not otherwise defined in this Work Rules shall have the meanings set forth in the Agreement. NJ TRANSIT shall have the right to from time to time reasonably amend and/or modify the Work Rules to reflect changes in Laws, requirements of NJ TRANSIT, or as necessary to accommodate reasonable changes in the nature and performance of the Work.

1.2 **Rules of Interpretation.** In the event of any conflict between these Work Rules and the Agreement, the Agreement shall control.

1.3 **Developer Parties Compliance with this Agreement.** PSE&G shall have the following duties and obligations (and PSE&G shall to the extent applicable, impose corresponding duties and obligations on its Project Contractors):

1.3.1 PSE&G shall visit and visually examine the Project Site and familiarize itself with the existing conditions and constraints that may affect the execution of the Work.

1.3.2 PSE&G acknowledges that the Work will be performed at the MMC/ROC in a manner which contemplates the continued and at times continuous operation of the MMC/ROC, including the operation of a passenger rail system, storage of rolling stock and

general business operations on a “24/7/365” basis. In view of such circumstances, the safety of the public is of paramount importance and therefore the PSE&G will be required to strictly adhere to the Work Rules.

1.3.3 PSE&G shall make Reasonable Efforts to limit physical damage to the MMC/ROC and adjoining areas.

1.3.4 PSE&G shall avoid causing any interference with NJ TRANSIT’s ability to operate all facilities at the MMC/ROC except as contemplated by the Project Execution Plan.

2. General Provisions.

2.1 Conditions Relating to Use of MMC/ROC. Prior to commencing any Work, PSE&G shall visit and carefully complete a visual examination of the applicable Work Zone(s) and shall generally familiarize itself with the MMC/ROC and the local conditions then existing that may affect the performance of the Work. PSE&G and their respective employees, representatives, agents, licensees, invitees, suppliers, supervisors, superintendents, foreman or others performing the Work at the Project Site (collectively, the “Project Workers”) shall have no right to use or enter any building at the MMC/ROC unless and only to the extent approved by NJ TRANSIT. As required by the Project Execution Plan, temporary sanitary facilities shall be installed and maintained within the Work Zone.

2.1.1 PSE&G acknowledges that the Work will be performed within proximity to an rail and public transit management operations occurring during daytime and nighttime hours, and both on weekdays and weekends, and that it is of primary importance that the Work be performed as follows: (i) to protect and maintain the safety of NJ TRANSIT employees, invitees and NJ TRANSIT passengers and other members of the public present at the MMC/ROC for any purpose; (ii) to avoid interference with the flow of vehicular and pedestrian traffic; (iii) to avoid interference with customary parking at the MMC/ROC; and (iv) minimize interference with customary business, rail and public transit operations at the MMC/ROC, in accordance with the Project Execution Plan.

2.1.2 In addition, in the performance of Work, the Project Workers shall not loiter in any areas outside a Work Zone, except with prior written consent of NJ TRANSIT. The Project Workers, during their respective Work hours, shall not eat or spend their break time in the surface parking areas, or other areas of the MMC/ROC outside of a Work Zone.

2.1.3 PSE&G shall inform NJ TRANSIT of Work performed outside the hours of 7:00 a.m. to 3:30 p.m., Monday through Friday.

2.2 Damage to Improvements. PSE&G shall not cause any damage to persons or property within or outside a Work Zone. Unless otherwise directed by PSE&G in connection with damage to an area do be demolished, PSE&G shall immediately repair any damage caused by the PSE&G.

2.3 **Temporary Utility Services.** PSE&G shall operate and maintain temporary utility services and facilities in a safe and efficient manner. Such services and facilities shall be deactivated when they are no longer required or are replaced by the use of permanent facilities contemplated by the Project Execution Plan.

2.4 **Temporary Sanitary Facilities.** Workers shall not be permitted to use the restroom facilities in the MMC/ROC. PSE&G shall cause the installation and maintenance, in good, clean and sanitary condition temporary sanitary facilities located entirely within Work Zones and shall be in such quantity and dispersed at such locations to comply with OSHA, health code and other applicable Laws.

2.5 **Pedestrian and Vehicular Traffic.** PSE&G shall not materially impede or impair the flow of pedestrian or vehicular traffic in the MMC/ROC. PSE&G shall cause all of the Project Workers to use only those pedestrian and vehicular paths of travel to the Work Zone from the parking areas outside of the Work Zone that the NJ TRANSIT has approved for use by Project Workers. PSE&G shall keep such designated paths of travel free from the accumulation of waste materials or rubbish caused by their use, and to remove from and about the paths of travel waste materials, rubbish, tools, construction equipment, machinery and surplus materials. In addition, PSE&G shall maintain the paths of travel, and promptly repair any damage to the path of travel. In the event that PSE&G fails to maintain and repair the Project Worker's path of travel in accordance with the terms hereof, the NJ TRANSIT shall have the right but not the obligation to repair and back charge PSE&G or off-set against amounts due PSE&G.

2.6 **Parking.** Construction workers and personnel shall only park in those areas designated for their use. Project Workers and any person or entity performing any Work shall park vehicles only in those other areas located on the MMC/ROC in accordance with the approved parking plan or as otherwise approved or designated by NJ TRANSIT for use by Project Workers and others performing the Work. Project Workers vehicles shall display a valid parking pass. Project Worker vehicles improperly parked may be towed at the vehicle owner's expense.

2.7 **Directional Signage.** When the Work involves installation of any temporary partitions or other barriers along the perimeter or outside of a Work Zone, PSE&G shall provide temporary directional signs adequate to facilitate changes in the vehicular and pedestrian traffic within the MMC/ROC caused by such temporary partitions or barriers. The physical composition, style, graphics, materials, size, content and location of temporary directional signs shall be consistent with temporary traffic directional signage used for public works projects.

3. **Restrictions on Work.**

3.1 **Use of MMC/ROC Perimeter Streets and Sidewalks.** Use by PSE&G of MMC/ROC roads and sidewalks shall be consistent with the Project Execution Plan; provided, however, those exceptions are permitted in connection with the interface of new or relocated roadway and utility infrastructure improvements with existing improvements. PSE&G shall provide information describing how PSE&G proposes to maintain emergency vehicular access throughout the MMC/ROC.

3.2 **Noise.** PSE&G shall maintain noise exposures below the limits specified in the Code of Federal Regulations (CFR) 29 CFR 1926 Occupational Safety and Health Regulations for Construction (OSHA) and other Legal Requirements. If noise exposures exceed the foregoing specified limits, then PSE&G shall perform the Work causing the noise exposures in such a way as to minimize interference with the operations of the MMC/ROC, arising out of such noise exposures.

4. **Planning of the Work.**

4.1 **Project Sequencing Plan.** PSE&G shall plan its performance of the Work in accordance with the Project Execution Plan.

5. **Site Security.**

5.1 **Delivery Vehicles.** With respect to the delivery of equipment and materials, the site security plan will contain the following elements: (i) upon arrival at a Work Zone, the truck driver will be required to identify himself, to produce a manifest and bill of lading of the materials or equipment contained in the delivery vehicle; and (ii) upon arrival at a Work Zone, a security officer designated by PSE&G shall be allowed to perform a reasonable inspection of the contents of the delivery vehicle to confirm that the delivery is consistent with the documents presented by the truck driver.

5.2 **Dangerous Materials.** Any delivery of explosive or Hazardous Material must be logged.

6. **Site Safety.**

6.1 **Site Safety Plan.** PSE&G shall take or implement safety programs in connection with the performance of the Work which shall include reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss to: (i) personnel performing the Work and employees of NJ TRANSIT; (ii) the completed Work and the materials and equipment to be incorporated therein, whether in storage within or outside of a Work Zone; and (iii) all improvements located on the MMC/ROC (including, without limitation, the Rail Operations Facilities and other property at the MMC/ROC, not located within a Work Zone, such as pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction. PSE&G's duties and responsibilities for safety precautions shall continue until such time as the Work is beneficially

used and occupied or, if earlier, when PSE&G completes its operations at the applicable Work Zone.

6.2 **Emergency Evacuation Plan.** PSE&G shall comply with the Project Emergency Evacuation Plan. The Emergency Evacuation Plan shall identify location(s) where workers will gather for future instructions from the site safety manager. PSE&G shall comply with all Homeland Security and terrorism security plans provided from NJ TRANSIT and/or by NJ TRANSIT. The MMC/ROC is a “Critical Infrastructure Site” as defined by the New Jersey Office of Attorney General. Accordingly, PSE&G shall abide by all applicable guidelines related thereto.

6.3 **Accident Reports.** PSE&G shall notify NJ TRANSIT of all accidents arising out of or in connection with the Work that result in (i) death, or serious injury, whether occurring within or adjacent to a Work Zone; or (ii) material damage to tangible property not located within a Work Zone. Such report shall provide reasonably complete details and statements of witnesses.

6.4 **Medical Equipment.** PSE&G shall confirm that equipment as necessary to supply customary first aid service is located on the applicable Work Zone.

6.5 **Intentionally Omitted.**

6.6 **Material Safety Data Sheets.** PSE&G shall obtain and submit to NJ TRANSIT for transmittal to NJ TRANSIT two (2) copies of each Material Safety Data Sheet (MSDS) in accordance with Law.

6.7 **Temporary Fire Protection.** Until fire protection is supplied by permanent facilities, PSE&G shall install and maintain temporary fire protection facilities at the Work Zone upon which it is working that comply with the requirements of the National Fire Protection Association NFPA 10 “Standard for Portable Fire Extinguishers” and NFPA 241 “Standard for Safeguarding Construction, Alteration and Demolition Operations,” or confirm that such facilities have been installed previously. If performance of the Work requires the removal of the existing fire/life safety systems from a particular area in the MMC/ROC, PSE&G shall replace the fire/life safety systems within such area so that at all times that area of the MMC/ROC remains continuously served by fire/life safety systems.

6.8 **Prohibition on Smoking and Intoxicating Substances.** Smoking shall be permitted only in designated areas. PSE&G shall enforce the prohibition against smoking outside such designated areas. Bringing intoxicating substances onto a Work Zone, consuming intoxicating substances at the Work Zone, and performing Work while intoxicated are strictly prohibited.

6.9 **Prohibition on Vehicular Gas/Diesel Fuel Tanks.** Vehicular gas and diesel fuel storage may not be maintained on the Project Site beyond amounts reasonable and customary for similar construction sites located in the region.

7. **Site Cleanliness and Other Related Conditions.**

7.1 **Clean-Up.** PSE&G shall maintain a neat, clean, orderly and workmanlike Work Zone. PSE&G, on a daily basis, shall clean up refuse, rubbish, scrap materials and debris caused by its Work. PSE&G shall remove from vehicular and pedestrian corridors, egress routes and emergency exits in operation pursuant to the Project Sequencing Plan any debris, construction material, tools, equipment and all other items that may impede traffic that are caused by PSE&G's operations.

7.2 **Dust Control.** PSE&G shall provide daily dust control to reduce airborne transport of dust from the Work Zone and shall endeavor to confine any dust generated by the Work to the Applicable Work Zone. Such dust control shall include covering with tarps or securing in such other appropriate manner all stockpiles of fill material or other materials that are likely to produce dust.

7.3 **Construction Material.** Any construction material or supplies that are left in place at times other than hours when Work is being performed shall be confined to the Work Zones, except otherwise authorized, and securely fastened so as not to be a hazard or impede traffic, in accordance with the Site Safety Plan. PSE&G shall protect the applicable Work Zones in the event of the threat of severe weather.

7/4 **Disposal of Rubbish.** PSE&G shall deposit rubbish and debris into containers located within Applicable Work Zone, from where it shall be removed, unless otherwise approved by NJ TRANSIT. PSE&G is not permitted to: (i) use any MMC/ROC dumpsters; (ii) burn or bury any debris at or on a Work Zone; or (iii) wash any waste material down drains or sewers serving a Work Zone. Any drains located within Work Zones shall be securely screened prior to the commencement of the Work to prevent such drains from being clogged with construction debris.

7.5 **Snow Removal.** PSE&G shall be responsible for snow removal within the Work Zone. NJ TRANSIT shall be responsible for snow removal from all other portions of the MMC/ROC. PSE&G may pile snow on portions of the MMC/ROC outside of the Project Site in connection with its removal with NJ TRANSIT's approval.

7.6 **Dewatering.** PSE&G must dispose of the water produced from dewatering activities in an appropriate manner and shall not pump such water back into NJ TRANSIT's sewer system unless approved in writing by NJ TRANSIT.

8. **Temporary Structures; Storage of Equipment and Materials.**

8.1 **Office Trailers.** PSE&G shall install such office trailer(s) or shanties, as permitted by NJ TRANSIT, in one or more locations entirely within the Work Zones. PSE&G shall be solely responsible for the acquisition, maintenance and subsequent removal of all utility and telephone services, storage rooms and toilet facilities, and the provision of security services required for such structures.

8.2 **Cranes/Hoists**. The positioning at the MMC/ROC of all cranes, hoists, derricks, guy lines and other similar equipment required for performance of the Work shall be in accordance with properly designed rigging plans.

8.3 **Storage and Staging Areas**. PSE&G's and its Project Contractors' storage and staging areas shall be located entirely within Work Zones. NJ TRANSIT and NJ TRANSIT must consent to use of areas outside of a Work Zone, but within the MMC/ROC, for storage and staging.

8.4 **Signs**. Unless otherwise authorized by NJ TRANSIT and NJ TRANSIT, no non-construction related advertisement or sign is permitted on any fences, temporary structures or elsewhere on the Work Zone. PSE&G may install a Project sign on the Work Zone, acceptable to NJ TRANSIT, that identifies the Project, NJ TRANSIT, PSE&G, NJ TRANSIT, PSE&G, Design Professional of Record and providing such other information as is typically presented on a construction project sign. Other directional and informational signs pertaining to the performance of the Work may be installed in the vicinity of the Work Zone.

8.5 **Equipment**. The use of gasoline, diesel and propane-propelled equipment and machinery is permitted, subject to (i) compliance with Laws with respect to ventilation of fumes; and (ii) compliance with Laws with respect to noise.

9. **Shutdowns**. All requests from PSE&G to shutdown systems within the MMC/ROC or for inspections or other assistance from NJ TRANSIT must be made initially to NJ TRANSIT for transmittal to NJ TRANSIT in advance of the scheduled shutdown, inspection or other assistance. A systems shutdown shall be requested if, in the judgment of NJ TRANSIT and PSE&G, there is no reasonable alternative to the shutdown. As a condition to the Commencement of any Work for which a shutdown, inspection or other assistance is required, the PSE&G must receive confirmation from NJ TRANSIT that such shutdown, inspection or other assistance that is necessary will be available.

Schedule G

Index of Designated Representatives

PSE&G Designated Representatives

PSE&G Substation Project Representatives

Garan Gunn

Eileen Spanicciati

PSE&G Executives

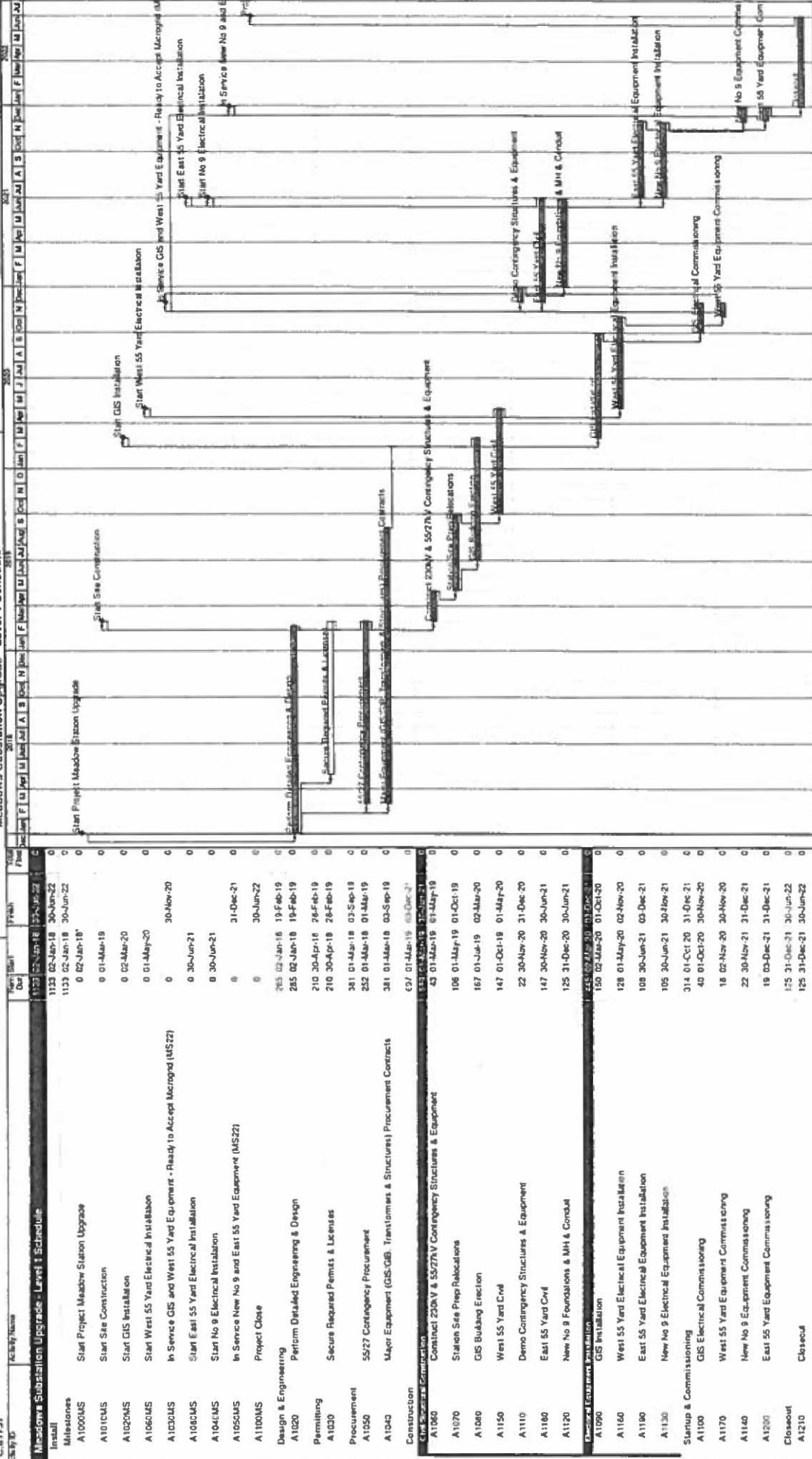
Michael Kayes, Director

Kim Hanemann, Senior Vice President

NJ TRANSIT Designated Representatives

NJ TRANSIT's Assistant Executive Director, Capital Planning and Programs

Schedule H
Project Schedule
Attached



Meadows Substation Upgrade - Level 1 Schedule
 PSEG - Detailed Schedule
 Data Date: 02-Jan-18

- Dates are preliminary and for informational purposes only. Actual dates subject to change based on satisfaction of the conditions subsequent contained in Section 2.1 of the Agreement and such other conditions as set forth in the Agreement.

- Remaining Level of Effort
- Actual Level of Effort
- Actual Work

- Remaining Work
- Critical Remaining Work
- Milestone

Schedule I

Insurance Requirements

NJ TRANSIT Insurance Requirements

NJ TRANSIT confirms that, at its sole cost and expense, it has elected for itself and its subsidiary companies to act as a self-insurer of its General Liability, Automobile Liability, Worker's Compensation, Employer's Liability, Umbrella/Excess Liability, Professional Liability and Pollution Liability to a level substantially in excess of the limits customarily required in agreements entered into for new construction. Self-insurance coverage does not differ from insurance that would have been provided had such insurance been obtained from a licensed insurer authorized to do business in the State of New Jersey, having the ability to perform all of its financial obligations and containing all the terms and conditions applicable to such insurance as required in this Agreement.

NJ TRANSIT further confirms that it will maintain all of its insurance coverages above the self-insured retention level in amounts substantially in excess of the limits customarily required for agreements entered into for new construction.

The insurance coverage provided by NJ TRANSIT under this Agreement shall be primary and non-contributory with respect to any and all other insurance or self-insurance maintained by PSE&G and shall not seek contribution from any and all other insurance or self-insurance maintained by PSE&G; will contain standard cross-liability provisions where applicable; and will provide for a waiver of all rights and subrogation against PSE&G by NJ TRANSIT and its insurers.

Prior to the Effective Date and annually thereafter, NJ TRANSIT shall deliver to PSE&G evidence of insurance with regard to insurance coverage by the Agreement. The evidence of insurance and the insurance policies required by this Agreement shall contain a provision that coverage afforded under the policies will not be cancelled, allowed to expire, or the limits in any manner reduced, without at least thirty days prior written notice to PSE&G, and in the case of non-payment of premium, at least ten (10) Days prior Written Notice to PSE&G.

All insurance coverage required under this Agreement shall be provided by insurance companies with ratings of A-/VII or better in Best's Key Rating Insurance Guide.

Failure to obtain and maintain the insurance required under the Agreement shall constitute a material breach of the Agreement and NJ TRANSIT will be liable for any and all costs, liabilities and damages resulting to PSE&G from such breach.

All of NJ TRANSIT's above listed coverages shall remain in effect until the completion date of the building phase for the project that is the subject of this Agreement.

PSE&G Insurance Requirements:

PSE&G confirms that, at its sole cost and expense, it has elected for itself and its subsidiary companies to act as a self-insurer of its General Liability, Automobile Liability, Worker's Compensation, Employer's Liability, Umbrella/Excess Liability, Professional Liability and Pollution Liability to a level substantially in excess of the limits customarily required in agreements entered into for new construction. Self-insurance coverage does not differ from insurance that would have been provided had such insurance been obtained from a licensed insurer authorized to do business in the State of New Jersey, having the ability to perform all of its financial obligations and containing all the terms and conditions applicable to such insurance as required in this Agreement.

PSE&G further confirms that it will maintain all of its insurance coverages above the self-insured retention level in amounts substantially in excess of the limits customarily required for agreements entered into for new construction.

The insurance coverage provided by PSE&G under this Agreement shall be primary and non-contributory with respect to any and all other insurance or self-insurance maintained by NJ TRANSIT and shall not seek contribution from any and all other insurance or self-insurance maintained by NJ TRANSIT, contain standard cross-liability provisions where applicable; and will provide for a waiver of all rights and subrogation against NJ TRANSIT by PSE&G and its insurers.

Prior to the Effective Date and annually thereafter, PSE&G shall deliver to NJ TRANSIT evidence of insurance with regard to insurance coverage by the Agreement. The evidence of insurance and the insurance policies required by this Agreement shall contain a provision that coverage afforded under the policies will not be cancelled, allowed to expire, or the limits in any manner reduced, without at least thirty days prior written notice to NJ TRANSIT, and in the case of non-payment of premium, at least ten (10) Days prior Written Notice to NJ TRANSIT.

All insurance coverage required under this Agreement shall be provided by insurance companies with ratings of A-/VII or better in Best's Key Rating Insurance Guide.

Failure to obtain and maintain the insurance required under the Agreement shall constitute a material breach of the Agreement and PSE&G will be liable for any and all costs, liabilities and damages resulting to NJ TRANSIT from such breach.

All of PSE&G'S above listed coverages shall remain in effect until the completion date of the Substation Project that is the subject of this Agreement.

Schedule J

Estimated Project Budget

Attached

Schedule J - Estimated Project Budget

Project Costs Estimate

Component	Total
Major Equipment List	\$ 38,700,000
Civil Construction	\$ 61,300,000
Electrical Construction	\$ 52,500,000
Construction Subtotal	\$ 152,500,000
Engineering/L&P/Procurement/CM	\$ 5,600,000
PSE&G Project Management	\$ 12,600,000
Sales Tax	\$ 2,000,000
Water Line	\$ 2,000,000
Project Subtotal	\$ 174,700,000
Escalation	\$ 15,700,000
Escalated Project Costs	\$ 190,400,000

NJ Transit Costs

Component	Total
NJT Costs to Date	\$ 9,100,000
NJT Program & PM	\$ 4,200,000
NJT Field Support	\$ 2,300,000
NJ Transit Costs	\$ 15,600,000

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Estimated Project Costs Total

Component	Total
Base Project Costs Estimate	\$ 206,000,000
Risk & Contingency Estimate	\$ 26,000,000
Estimated Project Costs Total*	\$ 232,000,000

*Estimated Project Costs exclude Unknown Costs (as defined in the Agreement).

Schedule K

NDA

Attached

PSEG

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between Public Service Electric and Gas Company, a New Jersey Corporation, for the benefit of itself and its subsidiaries and affiliates with its principal place of business located at 80 Park Plaza, Newark, New Jersey, 07102 (hereinafter referred to as "PSEG"), and New Jersey Transit (hereinafter referred to as the "RECIPIENT"), having its principal place of business at 1 Penn Plaza East, Newark, New Jersey, 07105. PSEG and the RECIPIENT shall be sometimes referred to, individually, as "Party" and collectively, as the "Parties."

WHEREAS, RECIPIENT is the owner of an electric substation, known as the Mason substation, in Hoboken, New Jersey; and

WHEREAS, PSEG owns and maintains a high voltage power line that runs through the Mason substation; and

WHEREAS, the Mason substation was severely damaged during the October 29, 2012 storm known as Superstorm Sandy and RECIPIENT seeks to repair the Mason substation; and

WHEREAS, RECIPIENT requires, and PSEG will provide, certain Confidential Information (as hereinafter defined) to RECIPIENT in connection with the repair of the Mason substation, subject to RECIPIENT's agreement herein to hold such Confidential Information in confidence pursuant to the terms below.

NOW THEREFORE, in consideration of the mutual premises recited above, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. The RECIPIENT agrees to accept, receive, or hold Confidential Information, whether oral or written, tangible or intangible (including all electronic or other magnetic/optical based medium) which PSEG considers to be confidential or proprietary, in confidence and to limit its use and disclosure of Confidential Information as set forth in this Agreement to the extent permitted by the Open Public Records Act, N.J.S.A. 47:1A-1.1 et seq., and the Freedom of Information Act, 5 U.S.C.552 et seq or any other statute or regulation requiring public disclosure by a public entity or anyone acting on behalf of a public entity.

2. The term "Confidential Information" means proprietary information regarding PSEG, disclosed to RECIPIENT by or on behalf of PSEG, including, but not limited to: business secrets, business information, business plans and practices, financial

PSE&G

and pricing information, financial statements and reports, employee information or data, project specifications, projections, schematics and drawings, trade secrets, processes, materials, customer information or data, shareholder information or data, supplier lists, sales volume, territories, markets, current, future or potential acquisitions, technical, production, operational, marketing or sales information or any and all other financial, business, organizational and technological information related to PSEG's business and/or organization, whether or not such information is specifically marked "Confidential" or with other similar legend. "Confidential Information" shall include all writings, notes, memoranda, (collectively, "Notes") made by RECIPIENT or its employees, agents or servants with respect to such Confidential Information.

3. "Confidential Information" does not include any information which:

(a) at the time of receipt was already possessed by RECIPIENT or was already in the public domain;

(b) after being provided by PSEG entered the public domain without any action or fault of RECIPIENT;

(c) is obtained from any individual, firm or entity which had the unrestricted right to disclose it;

(d) is required to be disclosed under court or governmental order (which requirement RECIPIENT shall use reasonable efforts to avoid or minimize by prior notice to PSEG, protective order, agreement or otherwise); or

(e) is independently developed by RECIPIENT without knowledge of or access to PSEG's Confidential Information.

4. In the event that RECIPIENT believes that it is required to disclose Confidential Information pursuant to a court order or other governmental order pursuant to Section 3(d) above, RECIPIENT shall promptly notify PSEG in writing and provide PSEG with the basis for its belief that it is required to disclose Confidential Information. Prior to any such disclosure, the RECIPIENT shall, RECIPIENT shall, if it is not otherwise ordered by a court to disclose such information sooner, provide PSEG at least 5 days to respond to such notice by seeking a protective order or similar measure to protect the Confidential Information from disclosure or providing an opinion of PSEG's counsel that disclosure is not required by court order or other governmental order.

5. This Agreement does not obligate PSEG to purchase any goods or services from the RECIPIENT and does not obligate RECIPIENT to sell or provide any goods or services to the PSEG.

PSE&G

6. RECIPIENT shall not use or disclose Confidential Information, in whole or in part, without PSEG's prior written consent during the term outlined in Section 12 herein.

7. RECIPIENT shall limit the possession and use of Confidential Information to individuals on a "need-to-know-basis". RECIPIENT shall make certain that its employees, agents, advisors and contractors ("Representatives") provided with access to Confidential Information have been advised of the obligations of this Agreement. RECIPIENT shall inform each of its Representatives who obtain or gain access to Confidential Information of the existence of this Agreement and shall not disclose the Confidential Information to such Representatives until each Representative first signs a commitment to comply with the terms and conditions hereof. RECIPIENT shall not provide any of Confidential Information covered by this Agreement to any entity or individual other than RECIPIENT's Representatives without PSEG's prior written consent. Any such disclosure to third parties shall be on a strict "need-to-know" basis. RECIPIENT shall remain fully responsible for any breach of the Agreement by its Representatives.

8. In the event RECIPIENT directly or indirectly obtains any Confidential Information pertaining to any PSEG employee, shareholder or customer, RECIPIENT shall hold said information in trust and confidence and comply with all PSEG requests and requirements pertaining to such PSEG employee, shareholder or customer related information in accordance with this Agreement, the Privacy Regulations ("HIPAA") and the Identity Theft Regulations, to the extent permitted by the Open Public Records Act, N.J.S.A. 47:1A-1.1 et seq., and the Freedom of Information Act, 5 U.S.C.552 et seq. or any other statute or regulation requiring public disclosure by a public entity or anyone acting on behalf of a public entity. RECIPIENT or its Representative(s) shall defend, indemnify and hold harmless PSEG, its employees, directors, officers, other members of its work force, shareholders or customers against any claims, suits, liability, losses or expenses incurred by PSEG, PSEG employees, directors, officers, other members of its work force, shareholders or customers as a result of the RECIPIENT's or its Representative's failure to treat PSEG employee, shareholder or customer Confidential Information in accordance with this Agreement.

9. RECIPIENT shall not make any copy or in any way reproduce or excerpt Confidential Information except for purposes outlined in this Agreement.

10. At PSEG's request and option regarding the Confidential Information, RECIPIENT shall immediately either (i) return such information to PSEG or (ii) destroy such information to PSEG. If PSEG requests the destruction of information disclosed pursuant to this Agreement, RECIPIENT shall provide PSEG with certification that all such information, including Notes, have been destroyed.

11. Confidential Information disclosed hereunder shall at all times remain, as between the Parties, the property of PSEG. No license under any trade secrets, copyrights, or other rights is granted by this Agreement or any disclosure of Confidential Information hereunder.

PSEG

12. RECIPIENT's obligations hereunder are in addition to, and not exclusive of, any and all other obligations and duties owed to PSEG and shall remain in effect for the greater of (i) five (5) years from the date of RECIPIENT's receipt of such information or (ii) the term of any agreement entered between RECIPIENT and PSEG or its affiliates and subsidiaries; provided, however, that with respect to PSEG's customer, shareholder and employee information, RECIPIENT's obligations and duties hereunder shall continue as provided under applicable law.

13. Subject only to its confidentiality and non-disclosure obligations as set forth in this Agreement, each Party's right to develop, use, and market products and services similar to or competitive with the Confidential Information of the other Party shall remain unimpaired. Each Party acknowledges that the other may already possess or have developed products or services similar to, or competitive with, those of the other Party disclosed in the Confidential Information.

14. Except as otherwise mutually agreed to, RECIPIENT may not use the name of PSEG in connection with any advertising or publicity materials or activities without the prior written consent of PSEG.

15. This Agreement may not be changed or altered, except by written agreement signed by both Parties.

16. This Agreement shall be governed by and construed under the laws of New Jersey, without regard to its choice of law rules, and any disputes arising out of this Agreement resulting in litigation shall be litigated in the state or federal courts of the State of New Jersey.

17. In the event of a breach of this Agreement, PSEG may suffer irreparable injury that may not adequately be compensated by monetary damages, that PSEG's monetary damages may be exceedingly difficult to measure, and that PSEG's remedy at law may be inadequate. Accordingly, RECIPIENT consents to an entry of an order of a court of competent jurisdiction granting an injunction against such breach without any requirement to provide or post a bond or other security as a condition of such relief.

18. This Agreement constitutes the full, complete and only agreement between the Parties hereto with respect to the foregoing and supersedes any previous agreements, representations or understandings, either oral or written.

19. This Agreement shall become effective as of the date Confidential Information is first made available to the other hereunder.

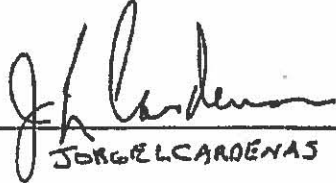
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
PSE&G

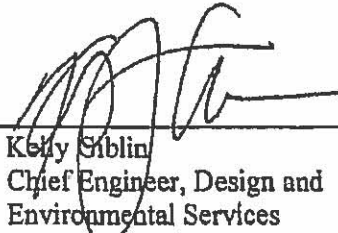
19. This Agreement shall become effective as of the date Confidential Information is first made available to the other hereunder.

IN WITNESS WHEREOF, the Parties have, through their duly authorized representatives, hereto set their respective signatures to this Agreement.

**PUBLIC SERVICE ELECTRIC
AND GAS COMPANY**

NJ TRANSIT CORPORATION

BY: 
JORGE L. CARDENAS


BY: 
Kelly Sibling
Chief Engineer, Design and
Environmental Services

TITLE: VP-AMCS
DATE: 5/13/14

DATE 1.28.14

This Agreement has been approved as to form only:

JOHN J. HOFFMAN
Acting Attorney General for the State of New Jersey

By: 
Deputy Attorney General

DP&C Distribution Capital 5 Year Plan - Detail - NJ TRANSIT - Meadows Substation

ATTACHMENT 2

NJ TRANSIT Cost Factor 1.06	Cost Split	
	PSE&G \$	100,000
	NJT \$	106,000
Total \$		206,000

PSE&G \$(K)	2018					2019					
	Cash_Flow_Type	Q1	Q2	Q3	Q4	Year Total	Q1	Q2	Q3	Q4	Year Total
CWIP	\$ 517	\$ 1,029	\$ 1,189	\$ 2,564	\$ 5,300	\$ 3,237	\$ 2,216	\$ 2,810	\$ 3,568	\$ 11,831	
Direct In Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
COR	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Base	\$ 517	\$ 1,029	\$ 1,189	\$ 2,564	\$ 5,300	\$ 3,237	\$ 2,216	\$ 2,810	\$ 3,568	\$ 11,831	
In Service Transfer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
In Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
NJ TRANSIT \$(K)											
NJ TRANSIT CIAC*	\$ 549	\$ 1,089	\$ 1,260	\$ 2,718	\$ 5,616	\$ 3,432	\$ 2,349	\$ 2,979	\$ 3,783	\$ 12,543	

PSE&G \$(K)	2020					2021					
	Cash_Flow_Type	Q1	Q2	Q3	Q4	Year Total	Q1	Q2	Q3	Q4	Year Total
CWIP	\$ 11,370	\$ 12,280	\$ 10,523	\$ 12,075	\$ 46,249	\$ 3,307	\$ 2,837	\$ 15,068	\$ 8,626	\$ 29,838	
Direct In Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
COR	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Base	\$ 11,370	\$ 12,280	\$ 10,523	\$ 12,075	\$ 46,249	\$ 3,307	\$ 2,837	\$ 15,068	\$ 8,626	\$ 29,838	
In Service Transfer	\$ -	\$ -	\$ -	\$ 60,590	\$ 60,590	\$ -	\$ -	\$ -	\$ 32,627	\$ 32,627	
In Service	\$ -	\$ -	\$ -	\$ 60,590	\$ 60,590	\$ -	\$ -	\$ -	\$ 32,627	\$ 32,627	
NJ TRANSIT \$(K)											
NJ TRANSIT CIAC*	\$ 12,054	\$ 13,017	\$ 11,154	\$ 12,798	\$ 49,023	\$ 3,507	\$ 3,006	\$ 15,972	\$ 9,143	\$ 31,628	

PSE&G \$(K)	2022					Grand Total
	Cash_Flow_Type	Q1	Q2	Q3	Q4	
CWIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 93,217
Direct In Service	\$ 6,055	\$ 359	\$ 279	\$ 91	\$ 6,783	\$ 6,783
COR	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Base	\$ 6,055	\$ 359	\$ 279	\$ 91	\$ 6,783	\$ 100,000
In Service Transfer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 93,217
In Service	\$ 6,055	\$ 359	\$ 279	\$ 91	\$ 6,783	\$ 100,000
NJ TRANSIT \$(K)						
NJ TRANSIT CIAC*	\$ 6,418	\$ 381	\$ 294	\$ 96	\$ 7,189	\$ 105,999

*NJ TRANSIT Cash flow does not include any Tax requirements that may be applicable to the NJT Portion.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

B.P.U.N.J No. 15 ELECTRIC

Special Provision Language To Be Added To High Tension Service Tariff

Eligibility for Service: This provision of the HTS tariff applies to substation-related service provided to a rail-rapid transit traction power customer that currently subscribes to High Tension Service (HTS) traction power service delivered at 230 kV to an existing multi-substation facility that has been rebuilt by Public Service based upon the approval of the Board of Public Utilities where such approval permits Public Service to own and operate the multi-substation facility and recover the costs of the multi-substation through the traction power customer and distribution rates. In addition, the multi-substation shall provide unique operational characteristics where in disaster or storm events, in which the bulk electric system is inoperable, the multi-substation can operate in isolation to facilitate a microgrid type contingency scheme.

Description of Service: The service provided herein shall be the provision of power to a multi-substation facility (meeting the eligibility requirement described herein) owned by Public Service that transforms and delivers power for a traction service HTS customer at voltage levels from 230 kV to 55kV, 27kV, and 12kV. Public Service and the customer will be required to enter into a protocols and operational responsibility agreement that addresses the maintenance and operational responsibilities for the substation. Unless the protocols and operational agreement specifically state otherwise, the terms and conditions of Public Service's tariff shall apply.

Rate Schedule: A customer that is provided this service shall be subject to the requirements of this service tariff as applicable for service delivered at the 230 kV level. All service provided to the substation shall be metered at 230 kV and billed at the 230 kV service rate for traction power service as set forth in the HTS service tariff, except for power delivered to the substation under standard tariff provisions for 13Kv which will be billed under the LPL-P tariff.