

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

**I/M/O THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY)
FOR APPROVAL OF A SOLAR ENERGY)
PROGRAM AND AN ASSOCIATED COST) BPU DKT. NO. EO07040278
RECOVERY MECHANISM)
)
)
)**

**DIRECT TESTIMONY OF
DIAN P. CALLAGHAN
ON BEHALF OF THE
NEW JERSEY DEPARTMENT OF THE PUBLIC ADVOCATE,
DIVISION OF RATE COUNSEL**

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Direct Testimony of Dian P. Callaghan

1 I. Background Information

2 **Q. Please state your name, title, and business address.**

3 A. My name is Dian P. Callaghan. I am an independent consultant on utility consumer
4 and consumer protection issues, currently retained as a Senior Consultant by
5 McFadden Consulting. My business address is 7843 E. 6th Place, Denver, Colorado
6 80230.

7 **Q. Please provide a summary of your education and experience.**

8 A. A copy of my resume is contained in the appendix.

9 **Q. What is the purpose of your testimony?**

10 A. The New Jersey Department of the Public Advocate, Division of Rate Counsel
11 (“Rate Counsel”) retained McFadden Consulting to review and evaluate Public
12 Service Electric and Gas Company’s (“PSE&G” or “Company”) above-captioned
13 petition for approval of a Solar Energy Program (“the Program”) and to determine
14 what consumer or consumer protection issues should be addressed. The overall
15 purpose of our testimony is to address these consumer protection issues and
16 recommend any changes to the Program, where appropriate.

17 II. Scope of Testimony

18 **Q. What is the scope of your testimony?**

19 A. My testimony addresses the consumer protection impacts on the residential and
20 low-income residential segments of the Program. Residential and low-income

1 residential customers require more consumer protections than other customer
2 classes because they have less experience with complex commercial transactions.
3 Consumer protections for residential customers are particularly critical given the
4 complex design of the residential segment of the Program, its confusing financing
5 arrangements, and its financial risks to customers.

6 We define consumer protections in this proceeding as those program
7 requirements necessary:

- 8 • to ensure that individual residential customers can make informed
9 decisions about whether to participate in the Program;
- 10 • to ensure that customers are informed in a clear and comprehensive
11 manner of all the positive and negative ramifications of their decision;
12 and
- 13 • to ensure that the terms and conditions of the Program are fair,
14 reasonable and understandable.

15 It is critical that consumers are fully aware of their rights, responsibilities,
16 obligations and liabilities under the Program prior to making a decision about
17 participating in it.

18 Consumer protection issues arise from both Program design and
19 implementation details. Many important implementation details have not been
20 determined yet by the Company. My testimony relies on the petition and testimony
21 filed by PSE&G, as well as responses to discovery requests propounded by various
22 parties. I also may refer to implementation proposals the Company characterizes as

1 agreed to in the working group meetings among the stakeholders. But, until
2 PSE&G amends its petition and testimony to reflect these proposed changes, they
3 are still just proposals. My comments in this testimony address the Program as
4 filed.

5 **III. Summary of Conclusions and Recommendations**

6 **Q. Please summarize your conclusions and recommendations.**

7 A. Based on my analysis of PSE&G's Petition and direct testimony, the responses to
8 discovery requests, the working group meetings in which I participated, and my
9 review of the current Clean Energy Program, my conclusions and recommendations
10 are as follows:

- 11 • Based on what is known about the Program, I conclude that the financial
12 risks outweigh the potential benefits that individual residential customers
13 might receive by participating in the Program, and therefore recommend
14 the BPU reject the Company's proposal.
 - 15 ▶ So many significant Program details are unknown I cannot provide a
16 comprehensive evaluation of the consumer protection issues. At the
17 very least, the Board should reject the Company's proposal as
18 incomplete.
 - 19 ▶ By refusing to lend directly to residential customers, PSE&G has
20 effectively shielded itself from providing consumer protections
21 afforded by the federal Truth in Lending Act.

1 ▶ PSE&G has not demonstrated that residential customers will
2 subscribe to this Program given that rebates, a Company-described
3 key program component, may not be available at all. Without
4 rebates, customers may be unwilling to borrow almost the entire
5 estimated cost of \$65,000, particularly given the complex financing
6 arrangements. Availability of rebates will depend on the Board’s
7 implementation of its solar program in Docket No. EO06100744,
8 which was recently addressed at a Board Agenda meeting on
9 September 12, 2007.

10 ▶ PSE&G’s proposed interest rate on the loans is as much as 60%
11 higher than the prevailing interest rate on Home Equity Line of
12 Credit loans (12.1138% compared with 7.50%), making the loan rate
13 unattractive to residential customers.

- 14 ● The design of this solar energy financing program for the residential
15 customer segment is complex, confusing, difficult to understand, and
16 lacking in even rudimentary consumer protections such as full disclosure
17 and transparency of the contracts, agreements, and transactions.
- 18 ● In the event of a third party default (i.e., the solar developer), or defective
19 solar energy system, residential customers are at risk of losing the money
20 they invested, as well as the solar system itself. Adding insult to injury,
21 these customers also would be paying the Societal Benefits Charge
22 (“SBC”) that supports the Program and pays the Company back for loans

1 in default. These are unacceptable risks and costs to residential
2 customers who subscribe to the Program.

- 3 ● Customers should not be at risk for service discontinuance for
4 nonpayment of a solar developer's charges billed by PSE&G, nor should
5 these costs be treated as if they were utility charges.
- 6 ● If the Board approves the Company's Petition, I make a number of
7 specific recommendations to incorporate information and protections for
8 consumers in the Program. I also emphasize that these changes will not
9 fix a fundamentally flawed Program from a consumer protection
10 perspective.

11 **IV. Information Reviewed**

12 **Q. Please describe the materials and information you reviewed in conducting**
13 **your analysis and preparing your testimony.**

14 A. In conducting our analysis, McFadden Consulting reviewed:

- 15 ● The Company's filed petition and exhibits
- 16 ● The prefiled direct testimony of Mr. Ralph A. LaRossa, President and
17 Chief Operating Officer for PSE&G
- 18 ● The prefiled direct testimony and exhibits of Mr. Frederick A. Lynk,
19 Manager of Demand Side Marketing
- 20 ● The prefiled direct testimony of Mr. Gerald W. Schirra, Director – Rates
21 and Regulations.

1 I also reviewed the Company's responses to discovery, participated by
2 conference call in several of the working group discussions, and reviewed the
3 agendas and notes from these meetings. In addition, I familiarized myself with the
4 various Summit Blue report findings that are the foundation of the Company's
5 petition and reviewed information on the New Jersey Clean Energy Program
6 ("CEP") website. The review of this information and material provided the basis
7 for my findings.

8 V. Description of Program for Residential Customers

9 **Q. Please describe the residential segment of the Solar Energy Program.**

10 A. The residential segment of the program provides half the financing for homeowners
11 to install a solar photovoltaic energy system ("solar energy system"), with an
12 estimated cost of about \$65,000¹. The homeowner must finance the remaining cost
13 through some combination of loans or cash, tax credits, and rebates (if available).

14 PSE&G will not lend directly to the homeowner because it would subject
15 the Company to licensing and other legal requirements of consumer lending.
16 Instead, PSE&G proposes three loan scenarios for residential customers. First,
17 PSE&G would provide a loan to the solar developer (the company selling or
18 installing the solar equipment, or the housing developer or contractor) who then
19 would enter into an agreement with the homeowner in which the homeowner would
20 assign the Solar Renewable Energy Certificates ("SRECs") to the developer for
21 loan repayment to PSE&G. In this case, the solar developer is the borrower. A

¹ See Response to Discovery Request RCR-RE-6 attached.

1 second option is that the solar developer would lend the money to the homeowner
2 and then transfer the loan to PSE&G. In this case, the homeowner would become
3 the borrower. The third option is that the solar developer would obtain the loan
4 from PSE&G, contract with the homeowner to install the solar energy system, and
5 then as project owner, contract with the homeowner to purchase the energy
6 produced by the system. In this case, PSE&G would bill the customer for the solar
7 developer's charges and remit them to the developer.

8 These three financing options involve a number of loan, maintenance,
9 power purchase, and customer agreements and contracts, some of which are entirely
10 separate contracts with no oversight by the Board of Public Utilities.

11 VI. Findings and Recommendations

12 A. General

13 Q. What are your general findings and recommendations?

14 A. As stated previously, the consumer protection issues I found in my review and
15 analysis of this Petition can be categorized as arising in both Program design and
16 implementation. In addition, I have the following general findings.

17 First, the Company has not determined many of the details of this solar
18 energy financing program. For example, PSE&G indicated it is negotiating with
19 the New Jersey Housing and Mortgage Finance Agency ("NJHMFA") to be the
20 loan originator for at least the residential low-income segment and possibly for the

1 entire residential segment². The Program design and implementation details of the
2 residential low-income segment of the Program have not yet been determined.
3 Until the details of the Program for the residential low-income segment are filed, I
4 cannot evaluate the consumer protection issues relating to this segment.
5 Furthermore, McFadden Consulting disapproves of the elements of the Program
6 that have been shown.

7 Second, in its petition and pre-filed testimony, the Company emphasized
8 that it would lend money in the residential segment only to the solar developer and
9 no loans would be made directly to the residential customer. However, in response
10 to recent data requests, PSE&G states that “The solar developer may choose to
11 originate the loan to a residential customer and then assign the loan to PSE&G.
12 Under that scenario, the residential customer would have the obligation to repay the
13 loan.”³ In this scenario, the residential customer would be the borrower, albeit
14 indirectly, but the Company avoids providing the customer with the protections
15 required by the federal Truth in Lending Act (“TILA”). Other negative
16 implications of this financing scenario for consumer protections will be described
17 under Program implementation.

18 Third, although the Company stated in its petition and testimony that some
19 level of rebates would be required for the residential segment, it is unclear whether
20 any rebates from the Clean Energy Program (“CEP”) will be available through

² See Response to Discovery request S-OE-9 attached.

³ See Response to Discovery Request RCR-RR-53 attached.

1 2008, if at all. This will be determined in the implementation of the Board’s solar
2 proceeding, Docket No. EO06100744, mentioned previously.

3 In the Company’s Petition and in Mr. Lynk’s testimony, PSE&G reiterates
4 that some level of rebate from the CEP would likely be required for the residential
5 segment.⁴ The Company also states that:

- 6 • “all solar rebates through 2008 are “spoken for”⁵
- 7 • there is an “insufficiency of SBC funding to provide sufficient rebates to
8 meet RPS targets beyond May of 2008”⁶
- 9 • rebates are being phased out.⁷

10 This means a key component of the Program for the residential segment
11 may be unavailable. Availability of rebates and the level of rebates may well drive
12 subscription to the Program by residential customers.

13 Fourth, the Company proposes to charge an interest rate on the loan balance
14 equal to “PSE&G’s weighted average cost of capital as determined in the
15 Company’s most recent base rate case, plus an incentive return set at 100 basis
16 points on the cost of equity, including income tax effects.”⁸ This equates to an
17 interest rate of 12.1138%. This is significantly higher than the prevailing interest
18 rate for home equity loans and lines of credit. For example, Consumer Reports

⁴Petition of Public Service Electric and Gas Company for Approval of a Solar Energy Program and an Associated Cost Recovery Mechanism (“Petition”), p. 13; Direct Testimony and Exhibit’s of Frederick A. Lynk, p.7, lines 4-5.

⁵Petition, p. 18.

⁶Petition, p. 19.

⁷Petition, p. 26.

⁸ Direct Testimony and Exhibit’s of Frederick A. Lynk, p.3, line 19 through p.4, line 1.

1 “Money Advisor” in its October 2007 issue states that the rate on a Home Equity
2 Line of Credit (“HELOC”) is

3 “...usually pegged to the prime rate and will fluctuate. People with
4 excellent credit scores can qualify for HELOCs with a rate of prime
5 minus 0.25; if the prime rate is 8 percent, your cost is 7.75 percent.
6 Those with credit scores in the 600s will probably have to pay prime
7 plus 0.25 to perhaps 1.”

8 As of September 19, 2007, many banks set their prime rate at 7.75%, which
9 means a prevailing rate on HELOCs would range from 7.50% to as high as 8.75%.
10 These are all significantly lower than PSE&G’s proposed rate of 12.1138%. The
11 Program’s 12% loan rate makes it unattractive to residential customers, particularly
12 when compared with the 8% home equity loan the customer is likely to get for their
13 half of the solar system cost.

14 **B. Program Design**

15 **Q. What are your Findings and Recommendations regarding the consumer
16 protection issues with the Program design of the residential segment?**

17 A. The current Program design in which PSE&G provides the financing to the solar
18 developer rather than directly to the homeowner/customer creates added
19 complexity, notice and disclosure issues, and generally blurs the distinctions
20 between project owner, borrower, site host, and project sponsor. The potential
21 financial risks to the residential customer in the event of a default by the solar
22 developer or a defective system are significant and unacceptable.

23 In the event of a default by the borrower, the Loan Agreement states that the
24 lender, PSE&G, can seize and sell the collateral, i.e., the solar panels and

1 equipment, and apply the proceeds to the loan balance. If the borrower is the solar
2 developer who defaults by failing to provide the SRECs from the homeowner to
3 PSE&G per the solar developer-homeowner agreement, and the Company seizes
4 the solar panels and equipment under the Loan Agreement, the
5 homeowner/customer could lose his or her investment in the system, lose the solar
6 energy system, and have no other recourse than to pursue the solar developer for
7 compensation under the terms of whatever agreement the homeowner had with the
8 developer. Adding insult to injury, the customer/ratepayer would still be paying the
9 SBC to support the Program, including any loans defaulted to PSE&G.

10 Additionally, under the current terms and conditions of the Solar Program
11 Loan Agreement (“Loan Agreement”), the developer could default and the
12 customer would receive no notice of it from PSE&G, even though the customer is
13 affected.

14 Another risk to the customer in the same scenario (i.e., solar developer is
15 the borrower and customer assigns the SRECs under a separate agreement with the
16 developer) is if the solar energy system fails to produce energy and no SRECs are
17 produced. PSE&G will not provide the loan to the solar developer unless the
18 system is performing, but the homeowner’s contract with the developer may not
19 have such a provision because it is an entirely separate agreement. If the system
20 fails to perform, the customer could lose whatever money he/she provided to the
21 developer up to that point. To protect the individual customer, all agreements and

1 contracts among PSE&G, the homeowner, and the solar developer must be
2 transparent.

3 As a result of this complex program design, the homeowner/customer's
4 rights, responsibilities, and liabilities versus those of the borrower/solar developer
5 and PSE&G are unclear. The customer is at risk from a third party default by the
6 solar developer/borrower. Moreover, PSE&G's reluctance to be a consumer lender
7 circumvents the protections for consumers required in the federal Truth in Lending
8 Act ("TILA"). PSE&G asserts that the TILA does not apply to it, but may apply to
9 the solar developer who originates the loan with the customer. The customer, who
10 may become the borrower, is entitled to those protections.

11 McFadden Consulting recommends that, if the BPU approves PSE&G's
12 proposed Program, PSE&G be required to make the disclosures under the TILA to
13 the customer under every financing scenario. While this requirement will not solve
14 the Program design problems, it may help the residential customer better
15 understand the terms and conditions of the loan. I also recommend that PSE&G
16 together with Rate Counsel and BPU staff develop comprehensive customer
17 education materials, while recognizing that no amount of customer education
18 substitutes for a clear, straightforward program in which the customer should sign
19 all agreements to which he/she is or may become obligated.

1 **C. Program Implementation**

2 **Q. What are your findings and recommendations regarding the consumer**
3 **protection issues with the Program implementation details?**

4 A. The following are our findings and recommendations regarding consumer
5 protection issues with Program implementation:

- 6 • Marketing and Consumer Education. PSE&G's testimony indicates that
7 customers will learn about the Program from the Company or the solar
8 developer, but that the Company will rely on solar developers for sales
9 and marketing. The Company has agreed to develop residential customer
10 information materials with review by Rate Counsel and BPU staff.
11 Because this information is important to understanding this complex
12 program, McFadden Consulting recommends that Rate Counsel and BPU
13 staff review and approve the content and also the distribution methods to
14 ensure access and availability of the informational materials to residential
15 consumers.
- 16 • Customer Selection of Solar Developer. PSE&G has indicated in both its
17 Petition and in Mr. Lynk's testimony that it will provide assistance to
18 customers in locating developers, including posting a list on its website.
19 However, the Company is still developing such details as the specific
20 qualifications developers must have to make the list and what causes a
21 developer to be removed from it. Some assurance that customers will be
22 selecting a qualified and reliable solar developer is a key consumer

1 protection, but how that assurance will be implemented is unknown at
2 this time. McFadden Consulting recommends that the Board review and
3 approve the qualifications proposed by PSE&G that a solar developer
4 must meet in order to participate in the Program, as well as the causes for
5 removal from the approved solar developer list.

- 6 • Application and Application Process. The project application process
7 described in Exhibit A to the Petition is primarily a loan application
8 process. Mr. Lynk's testimony indicates that the customer/owner is the
9 applicant.⁹ However, in response to discovery, PSE&G indicated the
10 Loan Program Application is between PSE&G and the borrower, in this
11 case the solar developer. To add to the confusion, if a solar developer
12 originates a loan with a residential customer with the expectation that
13 PSE&G will at some point assume that loan, then when must the loan
14 program application be completed and who is the applicant?

15 McFadden Consulting believes that the application process and
16 the confusing array of agreements and contracts are contrary to the
17 residential customers' interests. However, if the Board decides not to
18 reject the filed Program, I recommend that any loan agreement between
19 the solar developer and the residential customer be part of the
20 application and contingent on application approval. Further, I
21 recommend that the application for any residential segment project

⁹Lynk Testimony, Schedule FAL-2, p. 14.

1 contain a list of statements signed by the customer that specify in plain
2 language the residential customer's rights, obligations, and liabilities in
3 the event of a default, sale of the customer's home, solar energy system
4 failure, assumption of the loan by PSE&G, disposition of the SRECs,
5 ramifications of a billing services agreement between PSE&G and the
6 solar developer regarding customer nonpayment or partial payments and
7 service discontinuance, etc. The application, and all supporting
8 documents, should be reviewed and approved by the Board to ensure
9 these statements are comprehensive and understandable.

- 10 • Creditworthiness. Whether PSE&G will determine creditworthiness of
11 the borrower or will outsource this function to a commercial lending
12 entity has not been determined yet. It appears that the Company also is
13 considering a credit review of the host/customer, e.g., the residential
14 customer.¹⁰ If so, the Company needs to disclose to the customer the
15 credit review process and the impact on the customer's credit if the
16 application is rejected for customer credit reasons.
- 17 • Solar Program Loan Agreement. McFadden Consulting recommends
18 that if a default by a solar developer/borrower has any impact or imposes
19 any obligation on the residential customer, the notice of default by the
20 non-defaulting party (i.e., PSE&G) must also be provided to the customer
21 and include a description of the impacts or obligations on the customer,

¹⁰ See Response to Discovery Request RCR-RR-61 attached.

1 including PSE&G's right to seize and dispose of the solar panels on the
2 customer's roof.¹¹ This notice requirement should be added to the Loan
3 Agreement.

4 The Loan Agreement contains two provisions that require
5 balloon payments, potentially in cash, from borrowers. First, if the
6 value of the SRECs in any calendar quarter is less than 90 percent of the
7 loan payment amount, the borrower must pay the difference by the end
8 of the next calendar quarter in cash or SRECs¹². Second, if the rate
9 treatment accorded PSE&G's recovery of Program costs, i.e. the rate
10 recovery proposed by PSE&G in its Petition, is impaired or disallowed
11 by a later governmental decision, then PSE&G can require the borrower
12 to pay the outstanding loan balance within 30 days of PSE&G's notice
13 to the borrower¹³. These two provisions may create a hardship for
14 residential customers, and particularly for low-income residential
15 customers, who may not be able to produce the SRECs or cash on short
16 notice.

17 McFadden Consulting believes that these provisions place too
18 great a risk of default on residential customers and should be rejected.

19 PSE&G's proposal to have the solar developer originate the loan
20 with the residential customer and then transfer the loan to PSE&G raises

¹¹ Solar Program Loan Agreement, Exhibit B to the Petition, pp. 17-18, Section 11.2(a).

¹² Loan Agreement, Exhibit B, p. 6, Section 2.5(b)(vii).

¹³ Loan Agreement, Exhibit B, p. 9, Section 2.9(a).

1 a number of questions, including the obligations of the parties under the
2 assigned agreement. Since some of the provisions of the Loan
3 Agreement are unique to PSE&G as lender, a different loan agreement is
4 needed. If PSE&G is going to assume the solar developer's loan, then
5 we recommend the BPU require the Company to provide the model loan
6 agreement to Rate Counsel and BPU staff for their review and approval.

- 7 • Maintenance Agreement. Illustrating the lack of clarity of the Program,
8 particularly as it applies to the residential customer, PSE&G states that
9 the customer must have a maintenance agreement in place¹⁴, the owner
10 must enter into such an agreement¹⁵, and the borrower is responsible for
11 obtaining, paying for and maintaining the maintenance contract¹⁶. The
12 solar developer as borrower must obtain the maintenance contract as a
13 requirement for the loan application with PSE&G, but may also charge
14 the customer the estimated annual \$200 for the maintenance contract by
15 separate agreement. Another program unknown is whether the Company
16 will provide a list of qualified maintenance contractors and how
17 contractors would qualify for inclusion.

18 McFadden Consulting recommends that PSE&G prepare a
19 model maintenance agreement and provide it the Board for its review
20 and approval. Additionally, Board staff should review and approve the

¹⁴ Petition, p. 4, ¶11; and Response to Discovery Request RCR-RR-52 attached.

¹⁵ Petition, p. 11, ¶ 31.

¹⁶ Loan Agreement, Exhibit B, pp. 15-16, Section 9.5.

1 qualifications needed by a maintenance contractor to participate in the
2 Program through a licensing process as well as the grounds for removing
3 a contractor from the approved list.

- 4 • Billing Services Agreement. It appears that a residential customer can
5 opt to enter into an agreement with the solar developer wherein the solar
6 developer, or perhaps some other entity that has a loan with PSE&G,
7 owns the homeowner's solar energy system and sells the solar energy the
8 system produces back to the homeowner/customer. In this case, PSE&G
9 states it would bill the project owner's charges to the customer on
10 PSE&G's bill and remit them to the project owner. PSE&G also asserts
11 it would assume the receivables for these charges and apply the
12 Company's collection practices for delivery charges, including
13 disconnection for nonpayment.¹⁷ This option raises several consumer
14 protection issues and a regulatory question.

15 This arrangement requires the homeowner/customer to enter into
16 a Customer Agreement with the project owner, which may include a
17 Power Purchase Agreement, and a Billing Services Agreement between
18 PSE&G and the project owner. Apparently, the Customer Agreement
19 and Power Purchase Agreement are entirely separate, with the terms
20 decided by the customer and project owner, with no oversight by the
21 BPU or other regulatory agency.

¹⁷ Petition, p.9, ¶20; Testimony of Mr. Lynk, p.4, lines 12-20 and p. 5, lines 1-5.

1 Furthermore, there is a question as to the regulatory
2 ramifications of such an agreement. We asked PSE&G “Is an
3 owner/developer that owns solar generating facilities and sells the
4 output of such facilities directly to an end-use customer subject to the
5 BPU regulations regarding third party suppliers? If not, please explain
6 why such a generator is not subject to BPU regulations regarding third
7 party suppliers?” PSE&G’s responded that, “The request is beyond the
8 scope of PSE&G’s proposed Solar Energy Program.”¹⁸

9 I disagree. This is a critical issue that needs to be addressed by
10 the BPU. If the Program establishes a situation in which a third party is
11 charging for utility service, there may be other regulatory implications.
12 Given the complexity of this Program, Board oversight and regulation
13 may be needed for other elements of the proposal. If solar developers
14 provide energy to residential consumers, I recommend the Board find
15 that they are subject to the Board’s Third Party Supplier requirements.

16 PSE&G has not drafted the Billing Services Agreement that was
17 to be reviewed by the working group. This is yet another unknown
18 Program implementation detail that is important to consumer protection
19 and may answer questions about the proposed collection of the solar
20 developer’s charges and the consequences for nonpayment by the
21 customer. McFadden Consulting recommends the BPU require PSE&G

¹⁸ See Response to Discovery Request RCR-RR-67 attached.

1 to prepare a model Billing Services Agreement and provide it to Rate
2 Counsel and BPU staff for their review and approval.

3 PSE&G asserts that it will assume the receivables for the project
4 owner's charges to the customer, bill the customer for them, and treat
5 these charges as they would the utility's delivery charges, including
6 disconnection for nonpayment. Treatment of these charges as utility
7 charges for collection purposes raises a number of questions about the
8 application of BPU service discontinuance rules for solar developer
9 charges. If PSE&G bills its customer for the solar developer's charges
10 separately on the bill and did not assume the receivables, would those
11 charges be considered non-utility or unregulated charges, which if
12 unpaid, would not subject the customer to discontinuance of utility
13 service for nonpayment? How would partial payments be allocated? By
14 assuming the receivables, does PSE&G own the solar developer's debt
15 and does that make a difference in its treatment for collection?

16 McFadden Consulting recommends that the regulatory principle
17 that should apply is that utility service cannot be discontinued for
18 nonpayment of non-utility or unregulated charges. The solar
19 developer's charges, if billed by PSE&G on its bill, should receive the
20 same collection and service discontinuance treatment by PSE&G that
21 would be permitted under the BPU's rules, regardless of whether the
22 Company assumes the receivables. I also recommend that partial

1 payments be allocated first to all past due and current utility charges on
2 the bill to prevent inadvertent service discontinuance.

3 **VII. CONCLUSION**

4 **Q. Please summarize the major conclusions of your testimony.**

5 A. After evaluating PSE&G's Solar Energy Program as it pertains to consumer and
6 consumer protection issues, McFadden Consulting has concluded that the Program
7 as filed should be rejected by the Board. Reasons for this conclusion include:

- 8 ● The Program as filed is incomplete.
- 9 ● It is adverse to customers' interests, potentially putting them at serious
10 financial risk.
- 11 ● The Program circumvents consumer protections and regulations
12 implemented by the BPU, and the federal Truth in Lending Act.
- 13 ● The Company's proposed interest rate is significantly higher than the
14 prevailing market rate.

15 **Q. Does this conclude your testimony?**

16 A. Yes.

ATTACHMENTS

DIAN P. CALLAGHAN

PROFESSIONAL EXPERIENCE

Dian P. Callaghan is an expert in the area of consumer protection for utility services. She was the Administrative Director for the State of Colorado, Office of Consumer Counsel, for twenty years. She has prepared and submitted comments in numerous rulemaking proceedings before the Colorado Public Utilities Commission and the Federal Communications Commission pertaining to a variety of consumer protection issues, including customer proprietary network information, universal service, operator services, consumer privacy, confidentiality of documents submitted to the Commission, low-income (Lifeline) telephone assistance rules, rules pertaining to gas utilities, PUC rules of practice and procedure, telephone service quality and held service order rules, telephone presubscription rules, basic telephone service definition, service discontinuance, rules governing slamming, Caller ID, and E9-1-1 rules. Ms. Callaghan has filed testimony in numerous dockets including Docket No. 97 A-I 03T (363 Area Code Relief), Docket No. 90A-665T (Alternative Form of Regulation), Docket No 96S-257T (USWC Rate Rebalance), Dockets No. 91A-462T and 91 S-548T (Caller ID and Call Trace), Docket No. 98S-363T (NOW Communications). She assisted in preparation of the stipulation in the Public Service Company of Colorado performance-based regulation plan, service quality plan, the stipulation in the PUC show cause docket concerning USWC service quality (Docket No. 94C-587T), and the stipulation concerning the sale of Qwest Corporation's Dex, its business telephone directory. She designed and helped implement customer education plans and programs for new area code implementation, 1 +equal access in the intraLATA long-distance market, the 2000-2001 natural gas price increases, and others.

Dian was previously the Chair of the Consumer Protection Committee of the National Association of State Utility Consumer Advocates, Chair of the Legislative Committee of the PUC's 911 Advisory Task Force, She was also Chair of the Colorado Energy Assistance Foundation Board, member of the Colorado Commission for Low-Income Energy Assistance, member of the Utilities Task Force, served on the Governor's Energy Assistance Reform Task Force, and served on the Area Code Customer Education Committee.

Prior to being her position with the OCC, Dian was a management analyst for the Colorado State Patrol, an investment broker with Dain Bosworth, Inc., and held various management positions with the Colorado Division of Criminal Justice and the National Information Center on Volunteerism.

EDUCATION

Bachelor of Arts in Political Science from Trinity College (now Trinity University) in Washington, D.C. Completed most of coursework toward a Masters in Public Administration, University of Colorado at Denver.

RESPONSE TO RATE COUNSEL
REQUEST: RCR-RE-6
WITNESS(S): LYNK
PAGE 1 OF 1
SOLAR ENERGY PROGRAM

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
TYPICAL RESIDENTIAL SOLAR INSTALLATION

QUESTION:

Please provide a detailed description of the "typical" residential solar energy installation that the Company expects to fund within its Solar Energy Program, including, but not limited to: i) total installed cost, ii) expected number of years of operation, iii) expected annual maintenance costs; and iv) expected annual SRECs produced.

ANSWER:

PSE&G assumed that the average residential project will be 10 kW and

- i) total installed cost is estimated to be \$65,000
- ii) the expected number of years of operation is 20
- iii) the expected annual maintenance costs will be approximately \$200
- iv) the expected annual SRECs produced in year one will be 10. This will be reduced in subsequent years by 0.5% due to system degradation.

Please also see the testimony of Frederick A. Lynk, Exhibit FAL-2, pages 12-15, which describe the residential segment offer.

RESPONSE TO STAFF
REQUEST: S-OE-9
WITNESS(S): LYNK
PAGE 1 OF 1
SOLAR ENERGY PROGRAM

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
PARTNERING WITH NJHMFA

QUESTION:

On page 13 of the Petition, section 43, it states: “PSE&G will seek to partner with the New Jersey Housing and Mortgage Finance Agency’s ‘Sun Lit’ Program.” Has any contact been initiated yet? What was the initial reaction? Describe any implementation plans.

ANSWER:

PSE&G has met twice with the NJHMFA and they are interested in the prospect of this program being able to fund solar projects in affordable housing. A couple of early issues have been identified concerning the 15-year repayment life, and the fact that since NJHMFA is the underwriter of projects, the PSE&G debt would have to be subordinate to the State. The proposal could be modified to accommodate these concerns. During one of the meetings with the agency they brought in a developer who has a couple of projects where they are considering solar and they are running a financial analysis to determine the feasibility of using the PSE&G program. Further discussions are required to develop specific implementation plans.

RESPONSE TO RATE COUNSEL
REQUEST: RCR-RR-53
WITNESS(S): LYNK
PAGE 1 OF 1
SOLAR ENERGY PROGRAM

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
LOAN OBLIGATION FOR RESIDENTIAL SYSTEMS

QUESTION:

Ownership of Residential SREC. Is it correct that the loan from PSE&G to the solar developer to finance 50% of the residential solar energy system is still an obligation of the customer/homeowner who repays it through the SRECs generated by the solar energy system? If this statement is incorrect, please provide the correct statement.

ANSWER:

The obligation to repay the loan from PSE&G falls on the party who signs the loan agreement (i.e., the borrower). If the loan is from PSE&G to the solar developer, the solar developer has an obligation to repay the loan. The most likely way the developer would do so is to have the residential customer assign the SRECs to the developer, who would then use the SRECs to repay the loan.

The solar developer may choose to originate the loan to a residential customer and then assign the loan to PSE&G. Under that scenario, the residential customer would have the obligation to repay the loan.

RESPONSE TO RATE COUNSEL
REQUEST: RCR-RR-61
WITNESS(S): LYNK
PAGE 1 OF 1
SOLAR ENERGY PROGRAM

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
CREDITWORTHINESS OF CUSTOMERS

QUESTION:

Creditworthiness of Customers: In response to S-OE-10, PSE&G indicated that it will determine the creditworthiness of the borrower, utilizing credit criteria typically used in commercial lending arrangements. Please identify the borrower in each possible scenario for each customer class, i.e., residential, low income residential, C&I, Municipal/Public entities, and not-for profit customers. Does PSE&G plan to review the creditworthiness of customers on whose property the facilities are installed?

ANSWER:

For each customer class the borrower can either be the customer itself (in the case of residential customers the loan would not be originated by PSE&G) or a third party developer.

A credit review of the host customer of the borrower/developer may be appropriate as part of the overall credit evaluation of the project.

RESPONSE TO RATE COUNSEL
REQUEST: RCR-RR-52
WITNESS(S): LYNK
PAGE 1 OF 1
SOLAR ENERGY PROGRAM

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
CONTRACTS WITH RESIDENTIAL CUSTOMERS

QUESTION:

Contracts with Residential Customers. Please list and describe in detail all agreements, contracts, applications or other documents (including but not limited to any loan agreements, host agreements, project sponsor agreements, customer agreements) that a residential customer is a party or signatory to under this solar energy program. Please include in your response any agreements between or among the residential customer and (a) PSE&G; (b) a solar developer; (c) a solar company; (d) a solar installer; (e) SREC administrator. Please also include what party determines the content of each agreement.

ANSWER:

The following response assumes the solar developer is borrower and host customer owns the site. The list is a representative sampling of agreements that may be required to satisfy the requirements under the program. As is often the case, transactions are unique and may require other agreements to satisfy the parties involved.

- PSE&G Solar Loan Program Application: between PSE&G and borrower;
- PSE&G Solar Loan Program Credit Application: between PSE&G and borrower;
- PSE&G Billing Services Agreement; between PSE&G and borrower;
- PSE&G Solar Loan Agreement: between PSE&G and project owner;
- Maintenance Agreement: between customer and solar maintenance company;
- Installation Agreement: between customer and solar installer;
- Power Purchase Agreement (if energy sales are involved): between developer and customer;
- SREC Account Application and any related documents required to maintain an account on the SREC website: between SREC administrator and borrower.

RESPONSE TO RATE COUNSEL
REQUEST: RCR-RR-67
WITNESS(S): LYNK
PAGE 1 OF 1
SOLAR ENERGY PROGRAM

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
BPU REGULATION OF SOLAR GENERATORS

QUESTION:

Oversight of Solar Generating Organizations. Is an owner/developer that owns solar generating facilities and sells the output of such facilities directly to an end-use customer subject to the BPU regulations regarding third party suppliers? If not, please explain why such a generator is not subject to BPU regulations regarding third party suppliers?

ANSWER:

This request is beyond the scope of PSE&G's proposed Solar Energy Program.