

**IN THE MATTER OF THE
PROPOSAL BY PUBLIC SERVICE
ELECTRIC AND GAS COMPANY
TO DISCLOSE INDIVIDUAL
CUSTOMERS' PROPRIETARY
INFORMATION**

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

BPU Docket No. _____

**VERIFIED PETITION WITH
REQUEST FOR EXPEDITED RELIEF**

State of New Jersey, Division of Rate Counsel (“Rate Counsel” or “Petitioner”), respectfully submits this verified petition pursuant to N.J.S.A. 52:14B-8, to the State of New Jersey, Board of Public Utilities (“BPU” or “Board”), seeking an Order with expedited relief, as follows:

- a) declaring that the September 2010 proposal by Public Service Electric and Gas Company (“PSE&G” or the “Company”), to disclose individual proprietary information regarding its customers to a consumer credit reporting agency, violates N.J.S.A. 48:3-85;
- b) prohibiting PSE&G from taking any further action to implement this proposal to disclose individual proprietary information;
- c) directing PSE&G to publish a retraction of this announced proposal via press release, bill insert and its web site; and
- d) directing PSE&G to retrieve any individual proprietary information that it already has provided pursuant to its September 2010 proposal to any third party including any consumer credit reporting agency.

I. PSE&G's proposal to disclose individual proprietary information regarding its customers violates N.J.S.A. 48:3-85(b)(1). .

On September 22, 2010, PSE&G issued a press release announcing its intention to initiate full credit reporting to Experian of the monthly bill payments by all of its electric and gas customers. That press release announced that:

PSE&G is notifying electric and gas customers that it will begin to report credit information to a leading consumer credit agency beginning in early 2011. PSE&G will notify Experian when customers make timely payments as well as when their accounts are delinquent.

Beginning this month, the state's largest utility is notifying its customers who currently have delinquent account balances that credit reporting may begin as early as January 2011. These customers will be advised of the new reporting policy through letters and phone calls. All customers – including those who pay on time -- will be notified through messages on their bills and bill inserts before the policy takes effect.

[Certification of Richard W. LeLash, ¶ 6 and Ex. A; also available at <http://www.pseg.com/info/media/newsreleases/2010/2010-09-22.jsp> (last viewed 11/8/10).]¹

PSE&G proposes to initiate full credit reporting on all its residential, commercial and industrial electric and gas customers, whether they are delinquent or not. PSE&G's press release claimed that "full credit reporting is common practice with many other major consumer-oriented companies, including utilities, throughout the country." The Company also referenced studies by credit advocacy groups that claim to show customers with little or no credit history often benefit from full credit reporting. [LeLash Cert. ¶ 6.]

PSE&G initiated its proposal to implement full credit reporting without seeking input from any affected stakeholders and solely via a press release. Accordingly, full program details and impacts have not been provided. [Id. ¶ 7.] PSE&G issued this announcement without any

¹ That press release remained posted on the PSE&G web site, without retraction, as of November 1, 2010. [LeLash Cert. ¶ 6.]

public notice or opportunity to be heard, without full disclosure, and without formal approval by the Board.

PSE&G's proposal to disclose its customers' individual proprietary information to a consumer credit reporting agency would be a significant departure from the Company's current practice. In its most recent rate case, PSE&G stated in its answers to discovery that it "does not report its credit ratings to the consumer credit bureaus." [PSE&G answer to RCR-CI-92(5) dated Feb. 5, 2010, LeLash Cert. ¶ 6 and Ex. B.]

PSE&G's disclosure of individual proprietary information regarding its customers to a consumer credit reporting agency would violate express statutory prohibitions. The legislature, in the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., expressly prohibits electric and gas public utility companies from disclosing individual proprietary information to any third party without the customer's consent.

Except as provided in [N.J.S.A. 48:3-85(b)(2)]², an electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell or transfer individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage and electric power payment history, to a third party without the consent of the customer. N.J.S.A. 48:3-85(b)(1).

The plain language and clear meaning of this provision demonstrate that PSE&G's proposal is not permissible under the statute. The Appellate Division recently explained rules of statutory construction that apply here:

² This provision of EDECA, allowing limited disclosure by an electric or gas utility company of individual proprietary information "to a government aggregator that is a municipality or a county, or to an energy agent acting as a consultant to a government aggregator that is a municipality or a county, if the customer information is to be used to establish a government aggregation program" N.J.S.A. 48:3-85(b)(2)(a), is inapplicable here, since PSE&G is not a government aggregator or an agent for a government aggregator. See N.J.A.C. 14:4-1.2 (defining "government aggregator"). This is the only exception to the EDECA non-disclosure mandate that would allow disclosure to a third party.

[Statutory] “analysis ... begins with the plain language of the statute[,]” which “is ordinarily the ‘surest indicator’ of [the Legislature’s] intent.” “It is not the function of [a] [c]ourt to ‘rewrite a plainly-written enactment of the Legislature [] or presume that the Legislature intended something other than that expressed by way of the plain language.’” “Throughout, our analysis is informed by the injunction that ‘words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.’” Thus, a court should not look beyond the plain language of the statute and resort to extrinsic sources to divine legislative intent when “the statutory language is clear and unambiguous, and susceptible to only one interpretation. . . .”

Hand v. Philadelphia Ins. Co., 408 N.J. Super. 124, 138-39 (App. Div. 2009) (internal cites deleted) (emphasis added).

The plain language of EDECA, at N.J.S.A. 48:3-85(b)(1), expressly prohibits an electric or gas public utility company from disclosing to any third party individual proprietary information about a customer without the customer’s consent. The plain language of EDECA, then, unambiguously prohibits the wholesale disclosure of individual proprietary information as proposed by PSE&G.

EDECA does allow limited use by an electric or gas public utility company of individual proprietary information in limited circumstances. A utility is permitted:

to use individual proprietary information that it has obtained by virtue of its provision of electric generation service, electric related service, gas supply service or gas related service to:

- (a) Initiate, render, bill and collect for such services to the extent otherwise authorized to provide billing and collection services;
- (b) Protect the rights or property of the electric power supplier, gas supplier or public utility; and
- (c) Protect consumers of such services and other electric power suppliers, gas suppliers or electric and gas public utilities from fraudulent, abusive or unlawful use of, or subscription to, such services. N.J.S.A. 48:3-85(b)(5).

This subsection of EDECA allows limited use of customer information but does not specifically permit disclosure to third parties. Moreover, nothing in PSE&G's press release supports an argument that any of these exceptions apply in this case. PSE&G's announcement goes far beyond such limited, admittedly allowable use. PSE&G instead intends to grant itself the authority to release to a credit reporting agency, en masse, the individual proprietary information of every PSE&G customer, even those who pay the entirety of every bill on time. Such action is clearly far beyond the limited use allowed by the legislature in this statutory exception.

Interpreting this exception to include PSE&G's credit reporting proposal would run afoul of another essential maxim of statutory interpretation:

“When interpreting a statute ... [courts] endeavor to give meaning to all words” used by the Legislature. “[I]nterpretations that render the Legislature’s words mere surplusage are disfavored.” In re Commitment of J.M.B., 197 N.J. 563, 573 (2009); Clendaniel v. New Jersey Mfrs. Ins. Co., 96 N.J. 361, 367 (1984) (construing the statutory language of N.J.S.A. 39:6A-10, noting any “construction that will render any part of a statute inoperative, superfluous or meaningless, is to be avoided”).

Hand, 408 N.J. Super. at 139 (internal cites deleted).

If the limited use allowed under N.J.S.A. 48:3-85(b)(5) were read to allow the wholesale disclosure of individual proprietary information on every PSE&G customer, the express prohibition on disclosure in N.J.S.A. 48:3-85(b)(1) would be “inoperative, superfluous or meaningless.”

Accordingly, under the express language of EDECA, and a plain reading of the statute that gives meaning to all its words, PSE&G's proposal to disclose to a credit agency the individual proprietary information of all its residential, commercial and industrial customers violates the consumer protection standards set forth in N.J.S.A. 48:3-85.

II. The Board has the authority to order the requested relief to address the statutory violation.

Although the statutory language here is unambiguous, any ambiguity would be resolved in favor of the Board's interpretation of the statute. The Board has broad authority to regulate public utility companies such as PSE&G, including their customer service and consumer protection practices. BPU v. Valley Rd. Sewerage Co., 154 N.J. 224, 235 (1998) (quoting N.J.S.A. 48:2-13) ("The New Jersey Legislature has vested the BPU with 'general supervision and regulation of and jurisdiction and control over all public utilities.'"). That delegated authority includes the power to interpret and enforce the consumer protection standards of EDECA. A reviewing court will "accord to the agency's exercise of its statutorily delegated responsibilities a strong presumption of reasonableness." See Newark v. Natural Res. Council Dep't Env'tl. Prot., 82 N.J. 530, 539, cert. denied, 449 U.S. 983 (1980). Thus, even if the clear statutory language is viewed as ambiguous, any ambiguity should be resolved by the Board through consideration of this petition, rather than the unilateral action proposed by PSE&G.

N.J.S.A. 52:14B-8 authorizes any State agency "in its discretion [to] make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency." The legislature has delegated to the Board broad supervisory and regulatory power over public utility companies.

The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of [Title 48]. N.J.S.A. 48:2-13(a).

The courts have long held that this legislation grants the Board broad powers to order or prohibit specific activities by regulated public utility companies. New York, Susquehanna and Western

RR Co. v. Board of Public Utility Comm'rs, 29 N.J. 513, 523-24 (1959) (internal cites and quotes deleted) (Board had authority, under N.J.S.A. 48:2-13 and its police power, to require railroad to operate its intrastate operations out of a certain terminal); Petition of Public Service Coordinated Transport, 103 N.J. Super. 505, 513 (App. Div. 1968) (Board had authority to combine bus routes of competing independent bus companies); Bayonne v. Board of Public Utility Comm'rs, 30 N.J. Super. 520, 523 (App. Div. 1954) (Board authorized to order barricade of crossing over railroad property for safety of the public and persons using the trains). The Board is authorized to ensure that every public utility company upholds its responsibility to “furnish safe, adequate and proper service.” N.J.S.A. 48:2-23. “The board may, after public hearing, upon notice, by order in writing, require any public utility to [do so].” Id.

In general, the legislature delegated authority to the Board to, by order, “require every public utility ... to comply with the laws of the State.” N.J.S.A. 48:2-16(1)(a). In particular, the Board has broad authority to promptly resolve any dispute where a regulated utility practice threatens the public interest. N.J.A.C. 14:1-1.2; see N.J.A.C. 1:1-12.6 (procedure for emergency relief in contested case). Accordingly, the Board has the authority to order the requested relief.

III. The Board should grant the requested relief on an expedited basis due to the clear statutory violation, the risk of imminent harm to ratepayers, the lack of harm to PSE&G, and the important public interest involved.

A. Public utility customers are at risk of imminent harm that is not readily quantifiable as monetary damages.

Although the violation of EDECA is sufficient to justify the order sought by Rate Counsel, the order is also warranted because of the potential for irreparable harm to PSE&G's customers. The PSE&G proposal to disclose individual proprietary information presents significant and imminent risks to all of PSE&G's customers. The harms caused by an adverse

credit report, a breach of confidentiality or an erroneous report or release of individual proprietary information are well known. An adverse credit rating, whether based on accurate or erroneous information, can harm both residential and business customers, with risks such as potential denial or increased costs of credit, employment or housing. [LeLash Cert. ¶ 17.]

The risk of harm is greatest to low-income households, who are much more likely than higher-income households to pay a utility bill late. [Id. ¶¶ 16, 17.] Low-income consumers thereby face the risks of being denied credit, employment or a lease for housing due to an adverse, incomplete or erroneous reporting or handling of individual proprietary information by PSE&G or a credit reporting agency. [Id.] PSE&G has not disclosed the remedy for its customers who are aggrieved by its proposed disclosures or the process to obtain redress. [Id. ¶ 20.] Due to the involvement of multiple parties, the potentially serious and immediate ramifications for the consumer and the unclear remedy, the harm resulting from PSE&G's credit reporting may not be amenable to practical proof or redress through monetary damages. [See id. ¶¶ 17, 18, 20.]

Customers also face an increased risk of erroneous credit reporting, due to certain operational issues within PSE&G. PSE&G's proposal to disclose individual proprietary information appears to assume that every customer receives an accurate bill on a timely basis, but that is not always the case. Rebills, which are sent to correct and supersede an already-issued bill, give an indication of the number of missed meter readings, billing errors or inaccurate meter readings. [Id. ¶ 13.] PSE&G rebilled more than 20 per 1,000 customers per month during the 2006 to 2009 period, exceeding the typical industry benchmark of less than 20 rebills per 1,000 customers per month. [Id.] Thus, a customer's payment delinquency may relate to a billing error or dispute rather than mere late or non-payment. [Id.]

Moreover, during 2009 the Company began to experience service problems which it now links to its implementation of an updated computer system. [Id. ¶ 14.] The Company experienced a high number of complaints about billing in 2009, largely due to the implementation of iPower, PSE&G's new customer information system. [Id.]. The scope of other potential computer and billing problems is unknown. The risk of such potential errors, combined with PSE&G's proposal to disclose the individual proprietary information of every one of its approximately 2.1 million electric customers and 1.7 million gas customers,³ further increases the likelihood of erroneous credit reporting.

PSE&G's plan also does not fairly inform customers of when they will be considered delinquent for reporting purposes. [Id. ¶ 12.] For example, how many days after the date of the bill will the reporting be made? What would be the effect if the customer did not receive the initial bill, the bill was incorrect or disputed, or if the customer paid a significant portion of the bill but not the total amount? How will Experian evaluate a customer's delinquency for credit rating purposes? How does Experian's treatment compare to the Creditworthiness Score used internally by PSE&G? One outcome could be that Experian may consider a payment "late" even if the customer pays it within a time that PSE&G considers timely. [See id.]

In its most recent rate case, PSE&G stated in its answers to discovery a variety of billing events that cause PSE&G to send a notice of discontinuance of service for nonpayment. PSE&G stated that "[a] bill is considered outstanding if it is unpaid when the next bill is invoiced" and "[r]eminders are sent to residential customers with delinquent amounts between \$30 and \$60 and internal PSE&G Credit Worthiness Scores greater than or equal to 0." [PSE&G answer to RCR-CI-53 dated Oct. 28, 2009, LeLash Cert. ¶ 10 and Ex. D.] Taken together, those discovery

³ <http://www.pseg.com/family/pseandg/index.jsp> (last viewed 11/1/10).

answers suggest that a customer's failure to pay as little as \$30 of a bill, by the time PSE&G issues the next bill, may be considered delinquent, depending on that customer's Credit Worthiness Score ("CWS"). [LeLash Cert. ¶ 10.] PSE&G also admitted in its answers to discovery that its internal CWS "scoring method is not specifically discussed with customers because such discussions would likely create confusion, and the CWS formula is considered a dynamic tool that may change if appropriate." [PSE&G answer to RCR-CI-92(8) dated Feb. 5, 2010, LeLash Cert. ¶ 11 and Ex. B.] Evidently even if a consumer could figure out PSE&G's undisclosed CWS formula, the formula itself is subject to change.

In sum, the lack of standards, definitions and notice, combined with the likelihood that some errors will occur given the amount of data to be reported each month and the frequency of errors in billing systems of this size, create a real potential of harm to PSE&G customers. PSE&G does not reveal how it evaluates the individual proprietary information that it proposes to disclose. PSE&G's current tariffs do not clearly define what constitutes a late-paying customer.⁴

Customers have not been given adequate notice of what time frame would be used to determine delinquency for credit reporting purposes or how to correct errors when they occur. These factors create a very real threat of harm from disclosure that could deprive a customer wrongfully of a job, housing or a loan. The risk of harm is imminent, since PSE&G has announced it will begin this disclosure "in early 2011." The harm cannot be redressed by monetary damages and further justifies issuance of the order sought by Rate Counsel.

⁴ Paragraph 9.11 in PSE&G's Standard Terms and Conditions for commercial and industrial electric customers, for example, states: "At least 15 days time for payment shall be allowed after sending a bill." No maximum length of time is specified, however. In Paragraph 9.12, concerning the late payment charge, for classes of services where late charges are imposed, the Standard Terms and Conditions refer to payments "which are not received by Public Service within 45 days following the date specified on the bill." [LeLash Cert. ¶ 9 and Ex. C.] The date specified on the bill is never identified. [LeLash Cert. ¶ 9.]

B. Prohibiting PSE&G from its proposal to disclose individual proprietary customer information to a credit reporting agency will cause no harm to PSE&G.

PSE&G faces no risk from a Board order prohibiting its proposal to disclose individual proprietary information. PSE&G has operated successfully and profitably, for decades, without disclosing individual customer proprietary information to a credit reporting agency.

All public utility companies have a certain number of consumers who pay their bills late, and a small percentage of the late-paying accounts are eventually written off as uncollectible. PSE&G states in its press release that about 12 percent of its customers do not pay their bills on time. Extended payment lags and uncollectible accounts are elements of business risk for any firm, including regulated public utilities. Business risks are routinely considered by regulatory agencies in establishing a rate of return allowance for regulated public utilities such as PSE&G. [Certification of David E. Peterson ¶ 13.] In fact, PSE&G recently concluded a base rate case wherein the Board permitted the Company to increase its rates by \$100 million. [Docket No. GR09050422, by Board Orders dated June 7, 2010 (electric) and July 9, 2010 (gas); Peterson Cert. ¶ 4 and Ex. A.] The costs associated with extended payment lags and uncollectible gas account expenses were explicitly included in the determination of PSE&G's electric and gas revenue requirements in that rate case. [Peterson Cert. ¶ 13.] PSE&G also receives compensation for uncollectible electric bills through the Societal Benefit Charge ("SBC"). [Id. ¶ 12.] Accordingly, PSE&G does not need to disclose individual customer proprietary information because it already receives compensation for the risks of late or uncollectible bills.

The "lead-lag" time of its accounts receivable, the time lag between when PSE&G renders service to its customers and when it receives payment for that service from its customers (referred to in lead-lag studies as the "revenue lag"), was part of the revenue requirement

formula upon which PSE&G's newly effective electric and gas distribution rates were established in its most recent rate case. [Id. ¶ 6.] The revenue lag was an integral part of the cash working capital in the lead-lag study that PSE&G presented in that case. Specifically, the lead-lag study sponsored by PSE&G measured the time between (1) PSE&G's provision of service to its customers and its receipt of revenue for that service, and (2) the provision of service by PSE&G and its disbursements to employees and suppliers in payment for the associated costs (referred to in lead-lag studies as the "expense lead"). The difference between the revenue lag and the expense lead is expressed in days. The difference, when multiplied by PSE&G's average daily expenses, quantifies the cash working capital required for utility operations. This cash working capital requirement was included in PSE&G's electric and gas rate bases upon which a rate of return allowance was authorized and made part of PSE&G's revenue requirements. [Id. ¶ 7.]

The parties stipulated to the PSE&G lead-lag study, which included a 53.89-day average revenue lag. This "average" revenue lag includes payments from customers who pay their statements quickly as well as those whom PSE&G deems to be late-paying, and also includes all classes of PSE&G's customers (including residential, commercial, industrial). [Id. ¶ 8.] Customer accounts that are written off because they remain unpaid, however, were accounted for separately from the lead-lag analysis but were nevertheless incorporated into PSE&G's revenue requirement in the rate case. [Id.] Thus, PSE&G received full compensation for costs imposed by late-paying customers. [Id. ¶ 9.]

To the extent that customers accelerate their bill payments because of PSE&G's plans to notify a credit agency of late-paying customers, for each day that PSE&G can reduce its 53.89-day revenue lag, such change will reduce PSE&G's annual revenue requirement by an estimated

\$1.58 million in the electric department and by an estimated \$901,000 in the gas department; based on the rate of return that the Board authorized in PSE&G's most recent rate case. [Id. ¶ 10.] For example, a 15-day reduction in PSE&G's average revenue lag will reduce its annual revenue requirement by approximately \$23.69 million in the electric department and by \$13.51 million in the gas department. [Id.]

PSE&G's present rates were designed to compensate it for the 53.89-day revenue lag that was included in the lead-lag analysis. Thus, should PSE&G's proposed full credit reporting reduce the lag time in customer payments, PSE&G will receive additional revenue for which there is no corresponding cost offset; resulting in a windfall to PSE&G and its stockholders at the expense of New Jersey ratepayers. [Id. ¶ 11.]

PSE&G is already compensated as well through rates for revenues lost due to customers who fail to pay their utility bill, i.e., uncollectible accounts. PSE&G receives compensation through gas rates authorized by the Board for gas customers who fail to pay their gas bill and whose accounts are "written-off" by the utility company as uncollectible. [Id. ¶¶ 5, 12.] In PSE&G's most recent base rate proceeding, a normalized allowance for uncollectible gas accounts was included in PSE&G's recoverable operating expenses and annual revenue requirement. [Id. ¶ 12.]

Similarly, PSE&G already receives compensation from the SBC for its uncollectible customer electric accounts. N.J.S.A. 48:3-60(a). Uncollectible electric accounts expenses are recovered through PSE&G's SBC on a dollar-for-dollar basis. [Peterson Cert. ¶ 12.] The SBC treatment for uncollectible accounts guarantees cost recovery by PSE&G for its customers' electric accounts that are written-off. [Id.]

Thus, PSE&G, rather than its customers, would benefit if the proposed disclosure of individual proprietary information resulted in customers' giving priority to paying utility bills versus other necessary expenditures. [LeLash Cert. ¶ 8.] A December 2009 report by the National Consumer Law Center, entitled "Full Utility Credit Reporting: Risks to Low Income Consumers," similarly concluded that consumers are not the likely beneficiary of full credit reporting practices. That study noted that such reporting proposals by other public utility companies are clearly intended to limit the risk of prospective creditors such as PSE&G. [Id. ¶ 16 and Ex. F.]

PSE&G's customers with little or no credit history likely will not benefit from full credit reporting, despite PSE&G's claim that the purpose of its proposal is to help low-income and other underserved consumers who do not have traditional credit histories. Were that the intent, PSE&G could offer its customers full credit reporting on an opt-in basis where the customer decides whether or not the reporting will provide better access to credit. [LeLash Cert. ¶¶ 8, 16]. Rather than offer that option, PSE&G proposes to disclose all of its customers' confidential proprietary information, whatever their credit rating.

In any event, PSE&G's proposal goes far beyond helping credit-challenged consumers to establish credit. Instead, PSE&G proposes to disclose individual proprietary information of all of its customers, business and residential, irrespective of their credit histories, without the consent of any, for its own financial benefit. Accordingly, PSE&G will suffer no harm from a Board order prohibiting its proposal to disclose individual proprietary information, and in fact already receives adequate compensation for the risks from the lag time between service delivery and bill payment, and for late or uncollectible bills. Allowing PSE&G to implement its proposal will instead result in a windfall that violates the consumer protection standards in EDECA.

C. PSE&G's proposed disclosure of over two million customers' individual proprietary information risks harming an important public interest of the State of New Jersey.

PSE&G's proposal to disclose all of its customers' individual proprietary information implicates important New Jersey public policy concerns. The credit reporting proposed by PSE&G would profoundly undercut well-established consumer protections in this state. [LeLash Cert. ¶¶ 6, 7 and PSE&G answer to RCR-CI-92(5) dated Feb. 5, 2010, Ex. B.] PSE&G's proposed credit reporting would endanger the confidentiality of the individual proprietary customer information of the over two million New Jerseyans who receive electric and/or gas service from PSE&G. PSE&G customers have a reasonable expectation that their information will be kept confidential as required by the statute and thus maintaining confidentiality will preserve public confidence in the utility regulatory system.

The order requested by Rate Counsel would be consistent with the practice in other states. Full credit reporting is not common practice with many other public utility companies. As a general matter, full credit reporting is not prevalent in the utility industry, and it appears to be in conflict with general utility practice to treat customer-specific information as confidential for any use beyond the provision of applicable utility service. [Id. ¶¶ 7, 16.] The New Jersey legislature's decision to enact a statute expressly prohibiting such disclosure further demonstrates that non-disclosure is in the public interest.

PSE&G's proposed disclosure of individual proprietary information also would conflict with Board-approved low-income programmatic and regulatory protections that have been adopted in New Jersey, such as programs for payment assistance, arrearage management and deferred payment agreements. [Id. ¶ 19.] While the Board sanctions participation in these programs and payments through them may be considered timely by PSE&G, the law currently

protects the confidentiality of customer information relating to participation in such programs. It is unclear whether Experian would disclose such participation or how Experian will consider participation in these programs for credit evaluation purposes. [Id.] The result is that PSE&G's proposed credit reporting may discourage some from participating in these programs if they know their participation is subject to disclosure.

IV. Conclusion

Rate Counsel has established that New Jersey ratepayers are entitled to the requested relief on an expedited basis. PSE&G's proposal to disclose all of its customers' individual proprietary information clearly violates statutory consumer protection standards. PSE&G's customers are at risk of imminent harm that is not readily quantifiable as monetary damages from potential, and even likely, reporting errors and from the disclosure of their personal information. Prohibiting PSE&G from implementing its proposal to disclose individual proprietary customer information to a credit reporting agency will cause no harm to the Company, and serves an important public interest in preserving the public's confidential information and faith in the regulatory system. The Board has authority to order the requested relief, and the fact that the Company has announced it will begin this disclosure in early 2011 justifies expedited consideration by the Board.

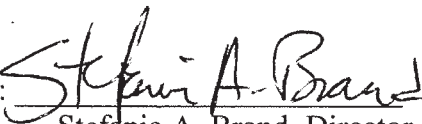
Accordingly, Rate Counsel hereby respectfully asks that the Board issue an Order with expedited relief, as follows:

- a. declaring that the September 22, 2010 proposal by PSE&G to disclose individual proprietary information regarding its customers to a consumer credit reporting agency violates N.J.S.A. 48:3-85;

- b. prohibiting PSE&G from taking any further action to implement this proposal to disclose individual proprietary information;
- c. directing PSE&G to publish a retraction of this announced proposal via press release, bill insert and its web site; and
- d. directing PSE&G to retrieve any individual proprietary information that it already has provided pursuant to its September 2010 proposal to any third party including any consumer credit reporting agency.

Respectfully submitted,

Dated: November 8, 2010

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