

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

IN THE MATTER OF THE RATE UNBUNDLING)	BPU Docket Nos.
FILINGS BY GAS PUBLIC UTILITIES)	GX99030121
PURSUANT TO SECTION 10, SUBSECTION A)	GO99030122
OF THE ELECTRIC DISCOUNT AND)	GO99030123
ENERGY COMPETITION ACT OF 1999)	GO99030124
)	GO99030125
ELIZABETHTOWN GAS COMPANY)	
NEW JERSEY NATURAL GAS COMPANY)	
PUBLIC SERVICE ELECTRIC & GAS COMPANY)	
SOUTH JERSEY GAS COMPANY)	

**INITIAL BRIEF
OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE
COMPANY SPECIFIC RECOMMENDATIONS -
PUBLIC SERVICE ELECTRIC & GAS COMPANY**

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COMPANY SPECIFIC RECOMMENDATIONS
PUBLIC SERVICE ELECTRIC & GAS COMPANY

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ISSUES

Public Service Electric and Gas Company's ("Public Service") proposal for the introduction of retail choice for its natural gas customers is woefully inadequate. As set forth more fully below, Public Service's proposal fails to provide adequate incentives to promote competition and contains numerous elements which would tend to inhibit competition. Public Service's proposed credit for the gas commodity, or "shopping credit", is based on a flawed allocation of costs and provides little incentive to foster a competitive market. Furthermore, Public Service's proposal for commercial switching fees, its proposal to have returning customers pay a higher gas cost rate, and its failure to fully unbundle its gas service would also work to inhibit the formation of a vibrant, competitive retail gas supply market and, in fact, create barriers to competition.

In short, Public Service's proposal provides little innovation and, thus, is not entirely unlike its earlier residential customer choice pilot programs, which were admitted failures. *PS-3*, p. 4. Public Service's first pilot residential choice program, its "Select Gas" program, in 1997 targeted a customer base of approximately 65,000 of its residential customers in four distinct geographic parts of its service territory. *RA-65*, p. 9; *I/M/O PSE&G*, BPU Docket No. GT96080619 (Order dated April 21, 1997). However, no suppliers participated and, in turn, no customers signed up under the Select Gas program. Public Service expanded its Select Gas program in 1999 to make customer choice available to 300,000 of its residential gas customers, about 20% of its total residential customer class. *PS-3*, p. 4; *See I/M/O PSE&G*, BPU Docket No. GT98050259 (Order dated May 5, 1999). To date, Public Service's expanded Select Gas

program has met very little success, with less than 1,000 customers participating, or less than 1/10 of one percent of Public Service's 1.03 million residential space heat gas customers. Public Service 1998 Annual Report to the BPU, p. G343. Without question, **Public Service's Select Gas program has fared the worst by far among the New Jersey gas utilities offering retail residential customer choice programs. Nonetheless, Public Service's instant proposal contains many of the same features and methodologies which marked its unsuccessful Select Gas program.**

Much more is needed to provide Public Service's retail gas customers with a viable competitive gas market and the attendant benefits that competition will bring. The goals set forth in the Electric Discount and Energy Competition Act ("Act") clearly demand a customer choice program which fosters competition in a manner more far-reaching than that proposed by Public Service. *P.L. 1999, c.23.*

Although Public Service's proposal fails to provide an adequate platform for launching a vibrant customer choice program for its gas customers, Public Service's proposal does provide numerous enhancements for its shareholders. Public Service includes in its proposal a mechanism to virtually ensure that it will recover any revenue erosion going forward, without any commensurate requirement for mitigation or offsets. Public Service also proposes to place the entire burden of recovery of 100 percent of its uncollectible balances on its gas customers.

As explained more fully below and in the generic section, Public Service's proposal fails to provide the actions needed to foster natural gas competition in New Jersey. Additionally, instead of bringing new efficiencies to benefit gas customers, Public Service's proposals for treatment of revenue erosion and uncollectibles place added burdens on its natural gas customers.

Finally, Public Service fails to address the need for a universal service fund and a plan to facilitate aggregation.

Public Service is the largest gas utility serving the State. The Ratepayer Advocate respectfully submits that the success of retail gas competition in New Jersey hinges largely on the success encountered in implementing a successful retail choice program for Public Service’s customers. Hereinbelow, specific recommendations regarding Public Service’s proposal are presented. If implemented, these recommendations will further the goal of enabling New Jersey gas customers to reap the benefits of a competitive market.

A. Basic Gas Supply Service (“BGSS”)

1. Nature of BGSS

As explained more fully in the generic section, the traditional annual LGAC adjustment mechanism is an impediment to competition, because under- and over-recoveries are carried over to the next year, distorting price signals. *RA-64*, p. 10. Thus, a BGSS proposal which employs only an annual adjustment is not reflective of a market rate, because of the time lag. Hence, customers might find it more difficult to compare various offerings to the BGSS rate.

Additionally, Third party Supplier (“TPS”) competitors would be required to compete against artificially high or low prices many months before the time for the next adjustment in the basic gas supply rate. *RA-64*, p. 11. However, balanced against the need for prices which reflect the market is the desire to mitigate extreme price volatility.

As part of Public Service's 1998 LGAC proceeding, the Board approved a monthly adjustment mechanism which eliminates, or at least greatly reduces, the troublesome annual over- or under-recovery balances found in traditional annual LGAC mechanisms, which distort price signals. *RA-64*, p. 11; *I/M/O PSE&G*, BPU Docket No. GR98070445 (Order dated December 22, 1998). Meanwhile, the monthly adjustment mechanism provides some level of protection against extreme fluctuations in gas prices. *RA-64*, p. 11.

Under the monthly adjustment mechanism approved by the Board, the gas cost initially established as part of Public Service's LGAC proceeding is subject to monthly adjustment in the event of changes that would have the effect of increasing or decreasing the projected level of over- or under-collections at the end of the LGAC period. *RA-64*, p. 12. These adjustments are limited to the months November through April and are subject to specified limits as to the amount by which rates may be adjusted in any month or in total during the entire winter season.

Further protection against volatile gas prices is provided by hedging. The Board has heretofore approved a hedging program for Public Service, whereby Public Service can hedge gas prices through the use of physical and financial contracts. *RA-64*, p. 10.

Public Service's use of the monthly adjustment mechanism, coupled with hedging, provides a reasonable balance between the need for accurate price signals without negating present protections against extreme fluctuations in gas price. The Ratepayer Advocate respectfully submits that **the Board should permit Public Service to continue to use the monthly adjustment mechanism and hedging for BGSS service at this juncture.**

2. Single vs. Multiple BGSS Options.

[n/a]

3. Terms and Conditions of BGSS

As discussed in the generic section, economic penalties imposed on customers who exercise their ability to choose a supplier deter choice. The treatment of customers who return to BGSS service has the potential to adversely affect choice and discriminatory pricing applied to returning customers deters competition. In addition, switching fees imposed on customers who shop impede the development of a competitive market, by creating a financial penalty for those who shop. As discussed more fully below, Public Service's proposal also includes both discriminatory pricing for BGSS customers and commercial switching fees.

The Act only authorizes one class of BGSS service to be provided by the regulated utility. *Act*, Sec. 10(o). Furthermore, the Act requires that BGSS service be cost-based. *Act*, Sec. 10(r). Public Service effectively proposes multiple rates for BGSS customers (*i.e.*, basic BGSS rate, MPGS rate, and ESS rate), depending on whether the customer does or does not switch suppliers, and on when a customer no longer takes service from a TPS. Clearly, Public Service's proposed BGSS pricing structure imposes economic penalties on customers who shop.

Under Public Service's proposal, a returning customer would not be permitted to take BGSS service if the customer returns outside of a specified grace period. *PS-1*, Schedule GWS-7, p. 16. After leaving BGSS service, a customer has only a limited one-time right to return to BGSS service. *PS-1*, Schedule GWS-7, p. 16. The right to return may only be exercised within a period no longer than one year and sixty days from the original BGSS termination date. *PS-1*, Schedule GWS-7, p. 16. Public Service proposes that a customer who returns outside this

limited period should be charged its hybrid Market Priced Gas Service (“MPGS”) rate, which differs from its BGSS rate. *PS-1*, Schedule GWS-7, p. 16.

From a gas customer’s perspective, MPGS service is less attractive than BGSS service. MPGS services provides only the prospect of down side price risk for customers. As Mr. LeLash noted in testimony, the MPGS rate has the potential to be higher than the BGSS rate. *RA-63*, p. 23. Although the MPGS rate is intended to recover incremental gas supply requirements associated with returning customers, the MPGS rate has a floor price equal to the BGSS rate. Thus, MPGS rates may rise above BGSS rates, but could never be lower than BGSS rates. *RA-63*, pp. 23-24. Clearly, MPGS rates are less attractive than BGSS rates and, as such, provide another impediment to unfettered customer choice.

While the imposition of the MPGS rate on customers may present an obstacle to choice for gas customers, Public Service’s shareholders would benefit from the application of the MPGS rate, since it shares in margins from MPGS sales. T1328-1329.

Public Service argues that its MPGS service is currently in its tariff and was extended to residential customers as part of its expanded Select Gas pilot program. *PS-4*, p. 14. However, the recent passage of the Act requires reconsideration of existing mechanisms. In fact, the Board Order approving the expanded Select Gas program explicitly notes that issues contained therein are “subject to the new legislation [Act] and the Board’s determinations in future proceedings.” *I/M/O PSE&G*, BPU Docket No GT9805029 (Order Adopting Interim Stipulation Phase I, 5/5/99), pp. 6-7. Under the terms of the original Select Gas program, returning residential transportation customers (FT-RSG) were explicitly excluded from the MPGS requirement. *PS-20*, p. 5.

Public Service also proposes to apply a high “Emergency Sales Service” (“ESS”) rates for customers dropped by TPSs mid-month or when the customer’s TPS has failed. *PS-1*, Schedule GWS-7, p. 53. Public Service’s ESS rates include an 18.1 cent surcharge, in addition to other incremental costs which comprise the ESS rate. *PS-1*, Schedule GWS-7, p. 53. This would likely pose a significant deterrent for residential and small commercial consumers who are no longer served by a TPS. *RA-65*, p. 33.

In instances where a gas customer is dropped by a failed TPS or in other instances where Public Service requires a residential or small commercial customer to take ESS service, the risk associated with TPS failures should not be borne by the gas customer. Public Service is in a better position to deal with supplier failures than the typical gas user. Unlike residential and small commercial customers, utilities like Public Service have the authority and resources to obtain financial information and adequate surety from suppliers and are, thus, more appropriately responsible for going after defaulting suppliers. *RA-63*, p. 25, T1966-7. Much like MPGS service, Public Service also shares in margins from ESS sales. TR-358. The Ratepayer Advocate respectfully submits that customers whose TPS has failed should be charged no more than the rate for BGSS service. *RA-65*, p. 33.

The BGSS rate should be the same for all residential and small commercial customers, as recommended by Mr. LeLash. *RA-65*, p. 33. **Consistent with the Act’s provisions, there should be a single BGSS rate, which applies both to customers who remain on BGSS, and those who return to the utility, voluntarily or involuntarily.** *RA-65*, p. 33. To provide otherwise is not only discriminatory, but is a barrier to competition as well.

Public Service also proposes a \$50 switching fee for commercial and industrial customers. The Act specifically prohibits the imposition of such fees for residential consumers. *Act*, Section 36(a)(5). With respect to usage and the availability of resources to evaluate gas supply options, small commercial customers are not unlike residential customers, and many of the concerns affecting residential customers affect small commercial customers as well. *RA-65*, p. 34.

Much like residential customers, the switching fee proposed by Public Service would amount to significant portion of the annual gas expenditures of small commercial customers. The imposition of additional charges for switching suppliers will deter choice. The Ratepayer Advocate respectfully urges the Board to eliminate all switching fees for small commercial customers who switch suppliers.

As explained more fully above, gas customers should not have to face impediments to their ability to choose their gas supplier, nor should gas customers be penalized for shopping. Thus, switching fees, penalties, and other features which will certainly discourage choice should be eliminated for residential and small commercial customers.

B. BGSS Rates/Shopping credits

1. Proposed Rate Unbundling Methodology

a. Treatment of gas supply costs currently included in distribution rates

As discussed in the generic portion of this brief, the first step in creating a shopping credit is to reallocate to the utilities' BGSS rates the gas supply costs which are presently

embedded in the rates for distribution service. Public Service’s filing identified \$40.7 million in gas supply costs which it determined might be more appropriately recovered in its firm gas commodity charge, or the balancing charge. *PS-1*, p. 16.

As explained by Ratepayer Advocate witness Mr. Ralph Miller, of this \$40.7 million, \$24.2 million should be allocated to balancing and \$16.5 million should be allocated to commodity service. *RA-65*, p. 18. Mr. Miller also removed various gas planning costs from the distribution rate, and removed the EDC amortization from the LGAC component. *RA-65*, p. 16. The net result is a pre-tax current gas supply cost of 40.95 cents per therm, exclusive of sales and use taxes. *RA-65*, p. 20. Public Service’s pre-tax CS commodity charge of 39.2980 cents per therm does not include any of the \$40.7 million in costs, which it acknowledges at least “arguably” should be reallocated to its rate for BGSS service. *PS-1*, GWS-5, p.1, line 6; T1296-1297. Public Service erroneously argues that Section 10(a) of the Act and the procedural orders of the Board prohibit the reallocation of cost responsibility recommended by the Ratepayer Advocate’s witness. *PS-4*, p. 13. Public Service argues any reallocation of these costs should take place in its next base rate case. *PS-4*, p. 14.

Public Service’s argument against reallocation of these costs in this proceeding is without merit. The Act only prohibits rate unbundling that will result in a “reallocation of cost responsibility between or among different classes of customers.” *Act*, Section 10(a). Here, the reallocation of gas supply costs to the commodity function within a customer class is not only consistent with the Act’s requirements, but also essential to effectuate the goals of the Act. In order to establish a competitive market in New Jersey and the unbundling of rates necessitated by the Act, gas commodity costs need to be properly allocated to the commodity portion of the

unbundled rate. To do otherwise would result in an artificially low BGSS rate, which would make it difficult or impossible for competing suppliers to offer savings to customers. Clearly, the failure to properly allocate costs to the commodity portion of the bundled rate would render the Act's unbundling provisions and policy goals meaningless.

The reallocation of gas supply costs proposed by the Ratepayer Advocate did not involve any impermissible reallocation of cost responsibility among or between customer classes. The reallocation of costs proposed by the Ratepayer Advocate involved costs allocated by unbundled functions (*e.g.*, gas supply, balancing, transportation, etc.), within each customer class. Such a reallocation of cost is essential to the development of an accurate unbundled commodity rate. It does not impact interclass allocations and, therefore, this reallocation does not violate the Act's prohibitions against the reallocation of cost responsibility **among** customer classes. The cost allocations proposed by the Ratepayer Advocate are in accord with the Act's provisions and should be adopted.

b. Reallocation of Margin Revenue.

Mr. Rohrbach, the Ratepayer Advocate witness sponsoring a shopping credit, proposed the reallocation of margin revenues as an incentive to encourage competition. As explained by Mr. Rohrbach and in more detail in the generic section, even if gas supply costs currently in base rates were reallocated to gas supply, the resulting BGSS rates might not be sufficient to create a competitive market. *RA-78*, p. 4. Mr. Rohrbach's shopping credit reflects a proper allocation of gas costs as well as an incentive for customers to shop. As noted by Mr. Rohrbach, customers as well as the marketing affiliates of gas utilities will benefit from the creation of a vibrant marketplace for gas made possible by an appropriate shopping credit. *RA-77*, p. 6.

Mr. Rohrbach recommended the application of 25 percent of the margin sharing revenue amount, prior to sharing, to the shopping credit. *RA-78*, p. 12. It is appropriate to use margin revenues to fund a shopping credit. As discussed in the generic section, these revenues are derived in part, from the utilities' existing monopoly status. Once the Board determines that shopping credits are necessary to implement a viable customer choice program, the Board should determine an appropriate shopping credits for all classes of customers in accordance with the principles set forth here and in the generic section.

Heretofore, Public Service's gas customer choice programs, lacking incentives, were a dismal failure. The establishment of an appropriate shopping credit to encourage competition is of particular importance for Public Service, given its poor record of success in implementing viable retail residential customer choice programs. *RA-78*, p. 7. Mr. Rohrbach recommended the application of a portion of margin revenues to provide a shopping credit incentive. In this way, ratepayers would continue to benefit from margin revenues in a manner which fosters competition. The shopping credit was responsible for the creation of a viable competitive electric marketplace in Pennsylvania. The absence of a shopping credit contributed to the dismal failure of a competitive electric marketplace in California. The Board should establish a shopping credit which will encourage competition for the benefit of the customers of New Jersey's largest utility, especially the residential customers.

c. Revenue Requirement Transfer

As an alternative to the reallocation of margin revenues proposed by Mr. Rohrbach, Mr. James Rothschild, a witness for the Ratepayer Advocate proposed a voluntary alternative method to encourage competition. Mr. Rothschild proposed that the utility could transfer the revenue

requirement associated with a 100 basis point point reduction in the rate of return from the distribution charge to the commodity charge. *RA-57*, p. 5. Mr. Rothschild reasoned that 100 basis point is conservative in that interest rates have dropped by 150 basis points since the last base rate case. *RA-57*, p. 6. For Public Service, this transfer would amount to \$14.51 million. *PS-12*.

2. Lost Revenue Recovery Proposals

In its proposal, Public Service has included a proposed Realignment Adjustment Charge would guarantee recovery of Public Service's asserted "lost revenues" and incremental costs associated with the implementation of the Act. As explained in the generic portion of this brief, automatic lost revenue and incremental cost recovery mechanisms are inconsistent with the Act and a windfall for utilities. They would result in rate **increases** rather than the rate **decreases** anticipated by the Act. As proposed, Public Service's Realignment Adjustment Charge proposal would amount to what Mr. LeLash describes as a "blank check" for Public Service's investors. *RA-65*, p. 23.

Equally troubling is the fact that Public Service's Realignment Adjustment Charge proposal does not require that it mitigate any revenue loss and would allow automatic recovery without regard to the level of earnings. T243:L2-12. Although Mr. Schirra says that Public Service would consider a mitigation requirement, Public Service's proposal does not require mitigation, and is silent with respect to any type of review proceeding. T241:L16-21. As discussed above in the generic section, the proper recovery mechanism for recovery of asserted lost revenues should continue to be a base rate case.

Public Service claims that a Realignment Adjustment Charge has been in its tariff since 1994. *PS-1*; *PS-2*, p.9. However, the Realignment Adjustment Charge previously incorporated in Public Service’s tariff applied only to commercial and industrial transportation customers, and was not intended to apply to gas sales customers or residential customers. Furthermore, the 1994 Realignment Adjustment Charge did not provide for the recovery of lost revenues, only the recovery of stranded costs related to the migration of gas sales customers to transportation which, to date, has not occurred. *PS-1*, p. 7, T1283-1284. The 1994 Realignment Adjustment Charge was placed in the tariff for a limited purpose has never been implemented, and has no relevance to the present market, and frustrates the achievement of the Act’s objectives.

Public Service also argues that its Realignment Adjustment Charge proposal eliminates “any incentive that Public Service might have to maintain cost recovery levels by discouraging competition.” *PS-2*, p. 10. Public Service should not have the option of discouraging competition. Public Service should be prodded to embrace and adopt practices which foster the Act’s objectives. In contrast, Public Service’s Realignment Adjustment Charge proposal not only is without support in the language of the Act, but would operate to thwart the Act’s goals if implemented.

The Act does not provide for the recovery of lost revenues. Furthermore, as discussed below, Public Service’s proposed Realignment Adjustment Charge recovery mechanism improperly applies the Societal Benefits Charge (“SBC”) to further its shareholder’s interests. The Board should prohibit Public Service from using the Societal Benefits Charge to recover any lost revenues that it might claim.

C. Unbundling of Gas Supply Services

1. Services Unbundled

In addition to unbundling the commodity and transportation cost rate components, Public Service should further unbundle component parts, *i.e.* balancing, storage, and customer account services. As discussed more fully in the generic section, unbundling of these components will permit TPSs to offer a greater variety of services to gas customers.

As explained more fully in the generic section, the utilities need to offer additional delivery options to TPSs in order to allow competition for balancing and the component parts of gas supply. Public Service only plans to offer its current monthly requirements service. In order to provide retail gas customers with a greater array of services, TPSs need greater flexibility in delivery and balancing, such as the flexibility provided by a daily requirements service (DRS) option. *RA-65*, p. 34. TPSs then would be able to choose between the present monthly requirements service, provided by Public Service, and daily requirements service in which the TPSs provide the balancing service. Public Service should be required to submit to the Board a proposal for a daily requirements service option by March 2000, for implementation by October 1, 2000, before the winter heating season.

Finally, Public Service only unbundled certain rate schedules. Public Service did not unbundle its non-cost based rates (CIG, CEG and ISG). Mr. LeLash recommended that these rates could be grandfathered for existing customers, but that going forward these rates need to be reviewed in the context of restructuring. *RA-65*, p. 12. At the time of their inception, the gas unbundling initiative culminating in this proceeding had not yet begun. The CIG, CEG and IEG

rates need to be examined in a future proceeding in light of the restructuring of the State's natural gas industry.

2. Format of Tariffs

As discussed more fully in the generic section, Public Service should be required to endeavor to make its tariff more easily understood and user-friendly, in a manner which would further the goals of restructuring and competition. Consumer information and education is an essential hallmark of competition. The tariff, including the standard terms and conditions, should also be revised to reflect unbundled rates and the Board's standards.

Customer tariffs also need to be revised to facilitate other services, such as balancing service. Public Service does not intend to unbundle balancing service for its residential customers, and includes its balancing charge in its CS rates. *PS-1*, p. 10. Mr. LeLash recommended that Public Service be required to unbundle its balancing charge. TPSs should have the option of providing balancing services for retail customers. *RA-65* at 13. This would provide an opportunity for TPSs to offer alternative gas delivery options for retail gas customers, who would then have more service choices.

D. CAPACITY ASSIGNMENT

1. Voluntary/Mandatory Assignment.

Public Service presently controls a significant amount of capacity. Given its large size, to the extent that Public Service controls a significant percentage of the available capacity, potential competitors will be disadvantaged. Mr. LeLash testified that Public Service maintains "an

extensive and diverse portfolio of pipeline capacity and therefore it is not subject to delivery bottlenecks to the same degree as other GDCs.” *RA-65*, p. 26. TPSs may need access to this capacity in order to participate in the retail gas supply market in New Jersey.

Mr. LeLash noted that “[t]o the extent that the relevant capacity pool serving the customer demand is constrained, TPS entities will need to take capacity assignment to be able to serve the migrating customers.” *RA-65*, p. 27. TPSs should be provided with the option of receiving a pro-rata share of the capacity based on the migrating gas sales customers that they serve, as recommended by Mr. LeLash. *RA-65*, p. 27.

Specifically, Public Service should be required to offer voluntary capacity assignment any time new customer growth is less than the level of firm sales load which migrates to TPS service, as Mr. LeLash recommended. *RA-65*, p. 30. However, instead of offering its capacity to TPSs, Public Service proposes to transfer its entire gas supply portfolio to an unregulated affiliate, where it may be beyond the scope of the Board’s regulatory authority. Presently, the petition for approval of Public Service’s proposed transfer is pending before the Board. *I/M/O PSE&G*, BPU Docket No. GM97100758. This petition should be subject to vigorous review through an evidentiary proceeding.

The capacity which Public Service seeks to transfer to its affiliate was maintained for the benefit of gas sales customers in its franchised service territory. As such, Public Service’s gas customers -- who have paid for this capacity through their rates over the years -- should have the opportunity to continue to have access to the benefits of this capacity. Messrs. Galligan and Mierzwa testified that utilities should make capacity, no longer needed due to customer migration, available to suppliers serving New Jersey customers, at the utility’s weighted average

cost. *RA-67*, p. 8. The anticipated new construction of gas-fired generation plants as a result of electric restructuring and environmental concerns might also increase the value of the capacity.

If Public Service plans to continue to pursue its proposal to transfer all or a portion of its gas supply portfolio to an unregulated affiliate, the Board should convene a special proceeding to determine whether the proposed transfer is in the public interest as recommended by Mr. LeLash. *RA-65*, p. 31. The proposed transfer involves contracts with \$300 million in annual demand charges, including both transportation and storage capacity. T1351. As Public Service's Mr. Wohlfarth testified, Public Service's gas utility proposed entering into a long-term (20-year) requirements contract with its affiliate for its gas supply, whereby the utility would be responsible for the full value of the supply. T1364-1365. Furthermore, Public Service, through the transferee, would continue to collect its share of the margins (15%) derived from off-system sales. T1358-1359. Thus, a Board review of this transfer must also consider whether ratepayers should be required to continue to guarantee full cost recovery through a requirements contract and whether Public Service's proposal might operate to restrict the development of a fully competitive gas supply marketplace in New Jersey. At the least, there should be a sharing of the benefits with ratepayers who have paid for the asset throughout the years in rates.

Public Service should be required to offer capacity to TPSs serving its transportation customers. Furthermore, Public Service's proposal to transfer its portfolio to an affiliate should be subject to Board review, as discussed above.

2. Other Issues

A holdover from the traditional regulated gas market is the margin sharing mechanism in effect now which makes off-system sales and capacity release more preferable to Public Service than capacity releases directly to TPSs serving gas customers in its franchise territory. Mr. LeLash noted this anachronism, as expressed in a Public Service discovery response. *RA-65*, p. 28, Table RWL-PS-1 (citing RA-UN-110). The current margin sharing mechanism needs to be reviewed in the context of the new regulatory environment, which stresses competition and retail choice.

As discussed more fully in the generic section, the existing margin sharing mechanisms are inconsistent with the goals of the Act, since they may encourage to retain more capacity than necessary to serve their remaining gas sales customers. *RA-65*, pp. 38-40. Public Service proposes to continue to share in margins from the sale of surplus capacity and off-system sales. The Board should convene a proceeding by March 1, 2000 to consider the role of these incentives in light of gas restructuring, as recommended by Mr. LeLash. *RA-65*, p. 30.

E. Societal Benefits Charge

1. Items Recoverable Through the SBC

The Act recognizes that the cost of certain important programs should be borne by all gas and electric utility customers through the application of a Societal Benefits Charge, or SBC. *Act*, Sec. 12. Specifically identified for inclusion in the SBC are the costs of social programs, nuclear decommissioning for electric utilities, manufactured gas plant remediation, DSM programs, and

certain consumer education programs. *Id.* Public Service, however, unilaterally takes an expansive view of the costs to be included in the SBC in a manner which benefits its shareholders, to the detriment of its ratepayers. Public Service seeks to recover through the SBC any lost revenues that it might experience, via a contrived “Realignment Adjustment Charge”, as discussed below and in the “Base Revenue Recovery Proposal” section of this brief. *PS-1*, p. 7.

a. Identification and Quantification of Social Program Costs.

In addition to the cost components specifically identified in the Act, Public Service also proposes to include costs representing all of its uncollectible accounts under the umbrella of the Act’s definition of “social programs.” As discussed in the generic section of this brief, “Social programs” are defined in Sec. 3 of the Act. The Act further states that the SBC “shall be set to recover the same level of social program costs as is being collected in the bundled rates.” *Act*, Section 12(a)(1). The only social program that Public Service intends to include in its SBC is the cost of its entire uncollectible account. As discussed in the generic section, the Act permits inclusion of only the uncollectibles attributable to Board-approved social programs.

Public Service, however, proposes to recover **all** of its uncollectibles through the SBC, because it claims that it was not able to identify the uncollectibles associated with its low-income customers. T219-221. The uncollectibles that Public Service seeks to recover from ratepayers through the SBC includes uncollectibles related to commercial and industrial customers, as well as wealthy residential customers. T221-223. Public Service’s uncollectible proposal is clearly not a social program tied to low-income and disadvantaged customers. Significantly, Public Service did not identify any other social programs for which it might seek recovery through the

SBC, nor does Public Service propose to include the costs of any other social programs in its SBC, other than the low-income initiatives included in its DSM program. T339-340.

The amount at issue is not insignificant. Public Service proposes to recover approximately \$15.69 million in uncollectibles. This, in turn, translates into a charge of 0.7644 cents per therm, which comprises almost half of Public Service's proposed SBC charge of 1.45346 cents per therm. T223:L21-T224:L18; *PS-1*, Schedule GWS-2.

If Public Service's proposal for uncollectibles were adopted, it would create a windfall for its shareholders and a significant burden for its ratepayers. Although Public Service's current rates are based on a fixed level of uncollectibles which Public Service might or might not recover, Public Service's proposed SBC mechanism would guarantee that it could reconcile these costs and ensure full recovery regardless of their level. The entire burden of uncollectible accounts would be shifted to Public Service's gas ratepayers. Assured of full recovery from its ratepayers, Public Service would be without an incentive to manage its uncollectible accounts if its proposal were adopted.

Additionally, Public Service's proposal to recover its uncollectible balances through its SBC would give it a competitive advantage over TPSs. TPSs would have to write off their uncollectibles. As Mr. Schirra of Public Service acknowledged, TPSs do not have the ability to use deferred accounting and seek recovery for their uncollectibles, nor would TPSs have the ability to collect interest on those amounts. T238-231. Thus, Public Service's proposal would also be detrimental to the development of a competitive market, since it would place TPSs at a competitive disadvantage.

Public Service should be required to specify and quantify the uncollectibles associated with low-income customers. As recommended by Ratepayer Advocate witness Richard LeLash, only those uncollectibles tied to low-income customers should be collected through the SBC. *RA-66*, p. 6. Public Service appears to acknowledge that they can quantify the amount of uncollectibles associated with its low-income customers, with assistance from the State. T334-335. The Board should direct Public Service to identify and obtain the necessary information and direct Public Service to make the necessary quantification of uncollectible expenses related to low-income customers. Furthermore, the Board should require Public Service to identify other social programs which should be included in the SBC, pursuant to the Act.

b. Identification and Quantification of Consumer Education Costs.

Public Service also proposes to include the costs of its consumer education programs in its SBC. However, Public Service's initial filing did not provide any information regarding its consumer education programs and their costs, although it had already begun its education program. *RA-66*, p. 7. Public Service did not provide an accounting of its consumer education costs and any break-down of its programs. Instead of reviewing these expenses in this proceeding, Public Service recommends that any review take place in a future, generic proceeding. *PS-2*, p. 9.

The Ratepayer Advocate respectfully submits that the Board should require Public Service to provide a detailed break-out of its consumer education expenses and programs for which it seeks recovery through the SBC. The Board's Order of June 25, 1999 addressing consumer education programs provides for deferred accounting for the cost of consumer education programs coordinated by the Utility Education Council ("UEC") and that utilities

“presumptively can recover same”, provided they meet the success measures to be set forth by the Board at a future date. *I/M/O Consumer Education Programs*, BPU Docket No. EX99040242(Order dated 6/25/99), p. 2. Given this presumed recovery, there is an immediate need for information about the education programs and their costs for further review by the parties as well as information about the content of their programs. For example, the review would ensure that customer education programs are neutral and do not favor one supplier over another, or the utility as a supplier of last resort. At this juncture, Public Service has not demonstrated that it has met the yet to be determined success measures.

Public Service has started to defer its consumer education expenses. Public Service has already spent \$3.9 million on education programs. T343. In addition, Public Service is conducting its own "grass-roots" consumer education program which goes beyond that coordinated by the UEC. Public Service expects to spend about \$5 million over the next year for its grass roots education programs, including \$420,000 for the services of New Jersey Citizen Action. T350-352; *RA-11E*. Public Service should be required to provide a detailed description and costs break-outs for consumer education costs that it proposes to include in the SBC.

c. Other Proposed SBC Components.

As discussed above, Public Service also proposes to include a “Realignment Adjustment Charge” in its SBC. *PS-1*, p.7; *PS-2*, p. 9. Public Service’s proposed Realignment Adjustment Charge is not among the SBC components specified by the Act. In contrast to the SBC components enumerated in the Act which are rooted in public interest programs benefitting ratepayers and the state in general, Public Service’s Realignment Adjustment Charge uses the SBC solely to provide profit protection for its investors. The Realignment Adjustment Charge

goes beyond those charges contemplated by the Act and explicitly included in the SBC. Public Service expands the SBC to include components which serve to advance the interests of the utility's stockholders to the detriment of consumers.

The Ratepayer Advocate respectfully submits that Public Service should be prohibited from implementing its proposed Realignment Adjustment Charge as an SBC component. Otherwise, Public Service's over-expansive view of the SBC would transform the "societal benefits" nature of the SBC into a revenue guarantee for its shareholders. The SBC should be strictly limited to those components specified by the Act.

2. Proposed Two-Way Interest

Public Service proposes that it be allowed to recover accrued interest on over- and under-recoveries of its SBC-related expenses. *PS-1*, p. 4. Public Service proposes to accrue interest on its deferred balances at its authorized rate of return. *PS-1*, p. 4. Notably, the Act does not explicitly provide for the accrual of interest on these balances. As discussed more fully above in the generic section, this issue should be addressed on a component-by-component basis, and one-way interest should be preserved for the components where the Board has not expressly authorized two-way interest, as recommended by Mr. LeLash. *RA-63*, p. 33; T2012:L10-15.

3. Interest Rate

Public Service proposes to accrue interest on any SBC deferrals at its authorized rate of return. *PS-1*, p. 4; *PS-2*, at 12. The Board has allowed interest at the rate of return only for DSM balances. *PS-2*, p. 12. Public Service presently earns interest using its intermediate-term debt rate on its remediation balances. Similarly, interest on customer account balances is set at a rate equal to a twelve-month average of the six-month Treasury rate. *N.J.A.C. 14:7-7.5*.

The Ratepayer Advocate respectfully submits that if the Board allows interest on under-recoveries, the interest rate should be set at the short or intermediate term debt rate. The electric Stipulation presented by Public Service to the BPU for consideration provided for interest on all SBC components, set at the rate for 7-year single A rated debt. *I/MO PSE&G*, BPU Docket Nos. EO97070461, *et seq.* (Final Decision and Order dated 8/24/99), Stipulation, p. 6. The Board ultimately ordered that interest accrue at a rate based on “seven-year constant maturity treasuries as shown in the Federal Reserve Statistical Release, on or closest to August 1 of each year, plus sixty basis points.” *I/MO PSE&G*, BPU Docket Nos. EO97070461, *et seq.* (Final Decision and Order dated 8/24/99), p. 116. Consistent with the Board’s ruling in Public Service’s electric restructuring case, to the extent that the recovery of accrued interest is allowed, the short or intermediate rate should be used on any components for which interest is permitted.

4. Deferred Accounting

Public Service proposes blanket deferred accounting treatment for its SBC costs. *PS-1*, p. 4. Presently, Public Service is only permitted to use deferred accounting for its DSM, remediation, and consumer education costs. Public Service proposes to extend deferred accounting treatment to its social program costs as well.

Specific advance Board approval should be required prior to any deferral of any SBC component, as recommended by Mr. LeLash. *RA-66*, p. 8. Initially, the Board should only permit deferred accounting for items for which there is a Board order allowing deferral. Requests for deferred accounting may be considered in annual SBC true-up proceedings, as Mr. LeLash further recommended. *RA-63*, p. 32.

5. **Mechanics of the SBC (establishment and true-up)**

Public Service proposes an annual true-up to reflect forecasted SBC costs and to amortize balances. *PS-1*, p. 4. The Ratepayer Advocate concurs that an annual true-up should be required as part of a future proceeding, pursuant to procedures established by the Board to review BGSS rates under Section 10(r) of the Act, as recommended by Mr. LeLash and as discussed more fully above in the generic section. *RA-63*, p. 33. Furthermore, as recommended by Mr. LeLash, these true-up proceedings should serve as the venue for any petitions for recovery of SBC cost components or requests for deferred accounting. *RA-33*, p. 33.

6. **Applicability of the SBC**

The Act provides that the SBC costs should be collected as “a non-bypassable charge imposed on all electric public utility customers and gas public utility customers, as appropriate.” *Act*, Section 12(a). The Act recognizes that electric and gas utility-related SBC expenses might differ and, thus, permits their respective recovery from either electric or gas utility customers, “as appropriate.” The only exemption from the SBC found in the Act is for certain on-site power generators for the **electric** SBC. *Act*, Section 28. Clearly, the Act explicitly provides that the SBC should be applied to **all** gas customers, including contract customers.

Public Service has proposed to exempt certain customer classes (CEG, CIG, ISG and contract customers) from the SBC. *PS-1*, p. 3. Among the contract customers served by Public Service is intervenor North Jersey Energy Associates (“NJEA”). NJEA argues that its present rates do not include the costs enumerated in the SBC. *NJEA-1*, p. 6. NJEA makes this claim although it has not presented its contract with Public Service into evidence. There is nothing in the record which supports NJEA’s claim that it should be exempt from the SBC charge. NJEA

has not demonstrated that there is anything in its Board-approved contract that prohibits the Legislature from requiring it to pay a fair share of the costs of societal benefits. In fact, the rates currently paid by NJEA include some remediation cost recovery. *NJEA-1*, p. 6; T1692:L9-T1693:L5.

As discussed in the generic section and as Mr. LeLash testified, the SBC is applicable to all gas utility customers. *RA-54*, p. 25; *RA-66*, pp. 7-8. Contrary to intervenor NJEA's claims, the uniform applicability of SBC does not violate the prohibition on re-allocation of costs among customer classes found in Section 10 of the Act. Section 10 applies only to rate unbundling. As noted by Mr. LeLash, the SBC is a separate issue from simple rate unbundling. T2111:L12-20. The Ratepayer Advocate respectfully submits that the SBC charge should apply to all of Public Service's gas utility customers, including its contract customers.

F. Customer Account Services

1. Required Cost Data

In order to facilitate a varied array of services that only a competitive market may offer, Public Service should be required to submit complete unbundled cost data for customer account services. To date, Public Service has only submitted a decremental cost data with the rebuttal testimony of Mr. Schirra. *PS-2*. Public Service has not yet submitted an embedded fully allocated cost study. As explained in the generic section, both an avoided and embedded cost study are needed. *RA-75*, p.4.

2. Unbundled Bill Credits

[No Ratepayer Advocate position at this time.]

G. Other Recommendations

1. Aggregation data requirements

Public Service has not proposed a program to encourage aggregation of its gas customers, nor has Public Service proposed any initiative to foster aggregation. In fact, Public Service helps to discourage aggregation by proposing a \$2 per page charge for customer usage data, payable by the customer. *PS-1*, Schedule GWS-7, p. 52; T291. In support of its fee proposal, Public Service proffers a Stipulation entered into in March 1997, prior to the implementation of the Act. *PS-20*. Furthermore, the stipulated charge referred to by Public Service applies only to FT-GS and FT-LV customers. Customer charges for usage data collected by the utility for its utility customers hinder the flow of information necessary to facilitate shopping in a competitive market and, therefore, should be eliminated.

Public Service should be required to provide local governments and consumers with the information needed to implement aggregation, as recommended by Mr. LeLash. *RA-63*, pp. 26-29. At a minimum, Public Service should be required to provide usage or load profile data and customer lists sorted by government boundaries. *RA-63*, p. 28. Furthermore, Public Service should disseminate lists of TPSs at least twice a year. *RA-63*, p. 29.

2. Universal service proposals

As discussed above in the generic section, it is essential that universal service programs should be in place as soon as possible to ensure that disadvantaged customers may also benefit from the introduction of competition into the gas market. Public Service should be required to

submit a proposal for programs and costs related to a universal service fund. *RA- 63*, pp. 35-38.

A further discussion of universal service requirements is found in the generic brief.

3. TPS Decertification

With respect to reliability, Public Service intends to unilaterally have the ability to decertify TPSs who do not deliver gas as required. *RA-65*, p. 26. As recommended by Mr. LeLash, TPS decertification should only be permitted with appropriate Board oversight. This is a serious economic penalty which requires due process procedures subject to Board supervision.

CONCLUSION

For all the foregoing reasons, the Ratepayer Advocate respectfully submits that the Board should Order that:

BGSS Service

1. Returning customers should be offered service at BGSS rates;
2. Switching fees should be eliminated for residential and small commercial customers;

BGSS Rates/Shopping Credits

3. The unbundling-related cost allocations recommended by Messrs. Miller and Rohrbach should be adopted;
4. A viable shopping credit be implemented through the reallocation of margin revenues or through the transfer of the revenue requirement associated with a 100 basis point reduction in the rate of return;
5. The Realignment Adjustment Charge mechanism proposed by Public Service for lost revenue recovery be rejected;

Unbundling of Gas Supply Services

6. Public Service submit a proposal for daily requirements service by March 2000 and unbundled rates in a manner which would permit TPSs to offer balancing services;

Capacity Assignment

7. Public Service offer voluntary capacity assignment any time new customer growth is less than the level of firms sales load which migrate to TPS service;

8. The proposed transfer of its supply portfolio to an affiliate be subjected to the review by the Board and will include among its inquiries as to whether the transfer is in the public interest, whether ratepayers should be required to guarantee full cost recovery through the proposed requirements contract, the proper value accorded to the transferred supply, and whether the transfer would restrict the development of a competitive market;
9. The current margin sharing mechanism for off-system sales and capacity releases be reviewed in a Board proceeding, in light of the new regulatory environment, which stresses competition and customer choice;

Societal Benefits Charge

10. Public Service identify and quantify the costs of social programs enumerated in the Act which may be recovered through the SBC;
11. Public Service's proposal for recovery of all of its uncollectibles through the SBC be rejected;
12. Public Service identify and quantify the consumer education costs which it seeks to recover through the SBC
13. Public Service's proposal for recovery of all of its lost revenues through the SBC as a Realignment Adjustment Charge be rejected;
14. Interest on deferred balances, if so ordered, be addressed on a component-by-component basis, with one-way interest preserved for items where the Board has not explicitly permitted two-way interest;
15. If the Board decides to permit Public Service to collect interest on deferred balances, the rate should be the short or intermediate term debt rate, not Public Service's authorized rate or return;
16. Specific Board approval be required prior to any deferral of any SBC component;
17. The SBC should be collected from all gas utility customers, pursuant to the Act's requirements;

Customer Account Services

- 18. Public Service submit both an avoided and an embedded cost study for customer account services;

Other Recommendations

- 19. Public Service submit a proposal which details the programs and costs related to a universal service fund to serve disadvantaged customers;
- 20. Public Service eliminate its \$2 per page fee for usage data and implement a program to facilitate consumer education and aggregation; and
- 21. TPS certification and decertification be subjected to strict Board oversight.

Respectfully submitted,

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RATEPAYER ADVOCATE

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Dated: November 16, 1999