



STATE OF NEW JERSEY
DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

RICHARD J. CODEY
Acting Governor

SEEMA M. SINGH, Esq.
*Ratepayer Advocate
and Director*

April 22, 2005

VIA UPS OVERNIGHT DELIVERY

Honorable Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: I/M/O the Petition of Public Service Electric and Gas Company for a
Bondable Stranded Cost Rate Order in Accordance with N.J.S.A.
48:3-49 et seq. to Recover its Basic Generation Service Transition
Costs

BPU Docket No. EF03070532

Dear Secretary Izzo:

Enclosed please find the original and eleven copies of the reply comments of the
Division of the Ratepayer Advocate (Ratepayer Advocate) on the above-referenced matter.
Kindly stamp the extra copy as "filed" and return it in the enclosed, self-addressed stamped
envelope. Thank you for your assistance.

Public Service Electric and Gas Company (PSE&G or Company) filed initial comments
limited to the issue of the \$645,581 in retroactive interest added to the Year Four BGS deferred
balance. The parties have been requested to file reply comments; therefore, the Ratepayer
Advocate will limit our reply comments to the issue of retroactive interest.

In its initial comments, PSE&G insists that it is the only party that can determine the intent of the order issued by the Board of Public Utilities (BPU or Board) in the Company's deferred balance docket and that its interpretation of the Deferral Order¹ is the only possible interpretation. *PSE&G Initial Comments*, p. 5. However, the only thing that is clear from a review of the Deferral Order is that the order is unclear concerning the issue of retroactive interest.

PSE&G's interpretation of the Deferral Order relies on the Company's definition of the term "interim period." *PSE&G Initial Comments*, p. 4. The text of the Deferral Order on this issue is as follows:

In the event that the Board has approved a securitization of the Year Four BGS under-recovery and the securitization transaction has not occurred by May 1, 2004, the charge established in Attachment 2 for this item will be used for the interim period to collect the BGS under-recovery. The recovery of the BGS under-recovery will be accounted for by first assessing on a monthly basis a carrying cost to the net of tax BGS under-recovered balance equal to a monthly rate based on the two-year constant maturity treasuries as shown in the Federal Reserve Statistical release on or closest to August 1, 2003 plus 60 basis points. The residual of revenues collected in any month will be used to adjust the BGS under-recovered balance. This process will continue until securitization occurs. This carrying cost is for the sole and exclusive purpose of determining a rate of interest for the interim period prior to a Board approved securitization taking place.

Deferral Order, p. 15.

However, it is reasonable to read the above paragraph of the Deferral Order to mean that the interim period mentioned is only that time in between May 1, 2004 and when a Board

¹ *I/M/O Petition of Public Service Electric and Gas Company's Deferral Filing Including Proposals for Changes in its Rates for its Non-Utility Transition Charge (NTC) and its Societal Benefits Charge (SBC) for the Post Transition Period Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1*, BPU Docket No. ER02080604, Order dated April 22, 2004, (Deferral Order).

approved securitization takes place. In this instance, May 1, 2004 seems to be the triggering date, not August 1, 2003.

The Ratepayer Advocate respectfully submits that our interpretation of the Deferral Order is more in keeping with previous Board procedures on deferred balances and is more plausible than that of PSE&G. The Deferral Order can reasonably be read as declining to charge ratepayers retroactive interest in the situation in which a securitization of the Year Four BGS deferred balance is approved but does not occur by May 1, 2004. As stated by our expert witness, Matthew I. Kahal, retroactive interest is a highly unusual procedure. *RA-1*, p. 11. If the Board had intended to use such an unusual procedure in this matter, it is reasonable to expect that the Board, recognizing the unusual nature of such an order, would have been particularly clear in spelling out its intent to apply such retroactive interest. However, the Deferral Order does not provide such specificity in this scenario.²

When the Board decides to use such an unusual procedure as a retroactive interest adjustment, it has stated this intent specifically. For instance, in the scenario where the Board rejects securitization, it has specified a retroactive interest adjustment back to August 1, 2003. *Deferral Order*, p. 15. As stated in our initial comments, the Ratepayer Advocate believes that if the Board had intended to require a retroactive interest adjustment in the scenario at issue, it could have done so with equal specificity. *Ratepayer Advocate Initial Comments*, p. 13.

² Concerning a minor matter, PSE&G attempts to bolster its argument by referring to the fact that Mr. Kahal was not a witness appearing in the Company's original deferred balance docket. *PSE&G Initial Comments*, p. 5. The Ratepayer Advocate believes that this minor fact is entirely immaterial to the issue at hand. The question concerning the proposed retroactive interest adjustment should be determined from the Deferral Order itself and relevant BPU policy. Mr. Kahal's expert qualifications were amply certified in his direct testimony including his many testimonies before the BPU itself. He is completely qualified to testify concerning his opinion on prior BPU policy and how the retroactive interest rate adjustment should be determined in this matter. It does not matter at all that he did not appear in the Company's original deferred balance docket, and the Board should reject that contention entirely.

The Ratepayer Advocate respectfully urges the Board not to include such retroactive interest. The Company's ratepayers have reasonably relied on the original Deferral Order not to go back in time and charge them a higher interest rate after they have already been making their payments on the BGS deferral balance according to the Deferral Order's original terms. Therefore, the Ratepayer Advocate respectfully requests that the Board reject the Company's attempt to increase the BGS deferred balance by the \$645,581 requested.

Respectfully submitted,

SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By: _____
Badrhn M. Ubushin, Esq.
Deputy Ratepayer Advocate

c: President Jeanne M. Fox
Commissioner Frederick F. Butler
Commissioner Connie O. Hughes
Commissioner Jack Alter
Service list