

**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 -
ELIZABETHTOWN GAS COMPANY**

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COMPANY SPECIFIC RECOMMENDATIONS
ELIZABETHTOWN GAS COMPANY

TABLE OF CONTENTS

	Page No.
I. INTRODUCTION	1
II. ARGUMENTS	5
A. Basic Gas Supply Service (“BGSS”)	5
1. Nature of BGSS	5
2. Single vs. Multiple BGSS Options	8
3. Terms and Conditions of BGSS	11
a. Switching fees.	11
b. Minimum contract period, limit enrollment periods and minimum aggregation load.	15
c. Higher rates to residential customers returning to BGSS.	19
B. BGSS Rates/Shopping credits	20
1. Proposed Rate Unbundling Methodology	20
2. Lost Revenue Recovery Proposals	23
C. Unbundling of Gas Supply Services	24
1. Services Unbundled	24
2. Format of Tariffs	27
D. Capacity Assignment	27
1. Voluntary/Mandatory Assignment	27
2. Other Issues	34
E. Societal Benefits Charge (“SBC”)	34
1. Items Recoverable Through the SBC	34
2. Proposed Two-Way Interest	36
3. Interest Rate	38
4. Deferred Accounting	39
5. Mechanics of SBC	39
6. Applicability of the SBC	39

F.	Customer Account Services	40
1.	Required Cost Data	40
2.	Unbundled Bill Credits	42
G.	Other Recommendations	42
1.	Aggregation	42
2.	Universal Service	43
III.	CONCLUSIONS	44

I. INTRODUCTION

Elizabethtown Gas Company (“Elizabethtown” or the “Company”) made its unbundling filing pursuant to the “Electric Discount and Energy Competition Act” *N.J.S.A. 48:3-49 et.seq.* (the “Act”) on April 30, 1999. Despite the express intent of the Act and the Board of Public Utilities’ (the “BPU” or the “Board”) March 17, 1999 Order Establishing Procedures (“Order Establishing Procedures”), Elizabethtown failed to fully unbundle rates for discrete services and has structured its plan to deter competition in its service territory.

Elizabethtown currently provides transportation service only to all of its commercial and industrial transportation service customers. In its filing, Elizabethtown proposes to provide transportation service to residential customers under rate RTS. According to its filing, RTS will be available to all customers eligible for service under Elizabethtown’s current residential customer class sales tariff.

The Act requires that all utilities provide Basic Gas Supply Service (“BGSS”). Elizabethtown proposes to offer customers electing to take from BGSS a choice of two commodity cost component pricing options: 1) a competitive offering called the “Fixed Price Option” in which the commodity cost will be fixed for twelve (12) months; and 2) a “Monthly Purchased Gas Adjustment Charge” where the prices of the commodity would fluctuate monthly. Under the Monthly Purchased Gas Adjustment Charge, Elizabethtown proposes to file the Monthly Purchase Gas Adjustment Charge with the Board one (1) business day before the price’s effective date which is the first day of every month. Elizabethtown proposes to discriminate against customers choosing the Monthly Purchased Gas Adjustment Charge by taking any over and under recoveries associated with the Fixed Priced

Option and adding or subtracting them from the Monthly Purchase Gas Adjustment Charge. This plan forces the customers under the Purchase Gas Adjustment Charge to be held responsible for any under and over recoveries resulting from the competitive Fixed Priced Option.

In Elizabethtown's filing, the Company proposes to allow residential customers to sign-up for Residential Transportation Service ("RTS") and the Fixed Price Option only during two enrollment periods a year and such customers must sign up for a one year term. Any customer returning to BGSS prior to the expiration of the term will be penalized with gas cost charges equaling 120% of the Monthly Purchased Gas Adjustment Charge for the remainder of their annual term. In addition, contrary to specific language in the Act, Elizabethtown proposes a \$15.00 switching fee to apply to all residential customers who switch to a third party supplier ("TPS"). The Company also proposes to continue to charge commercial and industrial customers a switching fee of \$50. All of the above requirements are clearly anti-competitive and are barriers to competition. Moreover, as filed, for a residential customer to receive the RTS rate, that customer will be required to contract with an eligible TPS serving an aggregate weather normalized RTS load of at least 36,000 Dth annually. Elizabethtown is the only utility company in New Jersey which has designed such criteria for TPSs.

Under Elizabethtown's proposal, the Company will require mandatory capacity assignment for TPSs serving residential customers. Elizabethtown claims it must institute mandatory capacity assignment to serve RTS customers to insure system-wide reliability and to avoid stranded costs. However, Elizabethtown does not require TPSs serving commercial and industrial customers to take mandatory capacity assignment. Further, Elizabethtown concedes in its testimony that, given certain

circumstances, comparable capacity assignment can be an acceptable alternative to mandatory capacity assignment.

Although the Act and the Board's June 25, 1999 Order of Clarification ("Order of Clarification") required the gas utilities to fully unbundle its rates, Elizabethtown failed to identify key components of its bundled rates such as storage and peaking costs. Moreover, under the Company's current proposal, only Elizabethtown can provide balancing service to customers in its service territory barring competitors from providing similar services. The Company's proposal to be the sole provider of balancing service within its territory is also made under the unreasonable claim that it is needed to insure reliability. With respect to gas delivery, Elizabethtown's proposal allows industrial and commercial customers to deliver the same levelized quantity of gas each day of the month, with the level of gas delivered changing from month to month ("Monthly Requirement Service"), but discriminates against TPSs serving residential customers who are limited to delivering the same levelized quantity of gas 365 days a year. Elizabethtown is the only gas utility in this proceeding that does not make available a Monthly Requirement Service for its residential customers. Again, all of these proposals are anti-competitive and barriers to competition.

Contrary to the express language in the Act, the Company proposes to use the Societal Benefits Charge ("SBC") as a "catchall", to improperly recover costs not specified in the Act including: 1) costs associated with the transition from a regulated to an unregulated marketplace; and 2) interest on the Company's unamortized MGP related costs. Costs components such as education and social program costs that are recovered through the Societal Benefits Charge ("SBC"), were not properly identified by the Company.

Finally, Elizabethtown failed to identify the cost components of “customer account services” as that term is defined in the Act claiming that the language in the Act was unclear. Of all of the gas utilities, Elizabethtown provided the least complete cost analysis in response to the Board’s Order of Clarification. Even though the burden to fully and accurately provide information necessary for the Board to make a determination in this proceeding rests directly with the utilities, Elizabethtown failed to seek clarification for provisions of the Act it believed were “unclear.”

II. ARGUMENTS

A. Basic Gas Supply Service (“BGSS”)

1. Nature of BGSS

Under the Act, “BGSS” is defined as a default service for customers that do not choose or cannot choose an alternative supplier. *Act*, Section 3. The Act also forbids BGSS from becoming another competitive service. *Id.* Therefore a utility’s natural gas supply offering must be basic, “plain vanilla” service available to all customers who, for whatever reason, remain or return to the Company.

Elizabethtown proposes to offer two pricing options for BGSS: 1) the Monthly Purchased Gas Adjustment Charge; and 2) the Fixed Price Option. *P-13*, pp. 22-23. As discussed later in the brief, Elizabethtown’s Fixed Price Option is a competitive option that should not be permitted to be offered by a regulated utility pursuant to the Act. The Monthly Purchased Gas Adjustment Charge proposed by Elizabethtown which is only vaguely defined in the Company’s filing, should be further defined in accordance with the Ratepayer Advocate’s generic recommendations with regard to BGSS pricing.

In his prefiled testimony, Ratepayer Advocate witness Mr. Richard LeLash recommended that the Board adopt the pricing mechanism used by Public Service Electric and Gas Company (“Public Service”) and New Jersey Natural Gas Company (“NJ Natural”) for their residential customers as part of the companies’ LGAC proceedings in BPU Docket No. GR9807044 (12/22/98) and BPU Docket No. GR98101014 (6/18/99). *RA-64*, pp. 9-12. Under these Board approved pricing mechanisms, the companies’ gas costs were subject to limited adjustments on a monthly basis in order to avoid over or under recoveries at the end of the year. These mechanisms benefit

competition by preventing the distorted prices that occur when over and under recoveries are carried over from year to year under the traditional LGAC mechanisms. In addition, these mechanisms together with the two utilities' hedging activities protect customer from natural gas price "spikes."

Elizabethtown has proposed a monthly adjustment mechanism, which would true-up any over or under recoveries in a "two month lag" basis. *P-13*, p. 24. However, the Company's filing does not otherwise describe how the mechanism will operate, and although natural gas competition is mandated to start in less than two months, the Company was unable to give details of how it plans to purchase gas under its BGSS proposal. T1577:L18 to T1583:L23. When asked by Ratepayer Advocate on how the Company proposed to purchase gas for BGSS, Elizabethtown's Director of Rates and Compliance Mr. Raymond DeMoine responded as follows:

A I believe that in my testimony I also state that we'll use a series of financial instruments to lock in and assure that pricing level.

Q Will you be purchasing through the spot market? Will you use hedging mechanisms?

A Hedging would be a financial instrument.

Q Yes.

A There are a number of different financial tools to assure a fixed price or a price within a range.

Q You don't know the details of that at this time, how that would work, how you would purchase?

A No, I don't have any specific proposal in my testimony, nor do I believe the Company has any specific proposals in this filing that would describe precisely how we would, which financial instruments or tools we would use, but it would be our intention to use financial instruments that are common. I think they're fairly commonly used today.

Id.

Therefore, we know very little about the Company's plan for BGSS pricing mechanism because of Elizabethtown's vague descriptions about how it will purchase gas. The Company should be directed to further define its proposed monthly pricing mechanism in accordance with the Ratepayer Advocate's generic recommendation.

Further, if Elizabethtown is permitted to offer its proposed Fixed Priced Option, the Board should reject the Company's proposal to charge its Monthly Purchased Gas Adjustment Charge customers for over and under recoveries resulting from the Fixed Priced Option. In addition to recovering the costs incurred by the Company from purchases made for the Monthly Purchased Gas Adjustment Charge, Elizabethtown also plans to impose the under and over-recoveries incurred to provide the Fixed Priced Option to Monthly Purchased Gas Adjustment Charge customers. *Id.* T1583:L9-24. This would be grossly unfair to the Monthly Gas Adjustment Charge customers, who would be compelled to pay for the Company's losses in the event it were to set too low a price for its Fixed Priced Option customers. This would also be unfair to competing TPSs because Elizabethtown would under price the Fixed Priced Option, knowing that any deficiencies could be recovered from its other BGSS customers.

The Ratepayer Advocate's proposed BGSS pricing mechanism addresses the flaws found in the Company's Monthly Purchased Gas Adjustment Charge BGSS pricing mechanism. Under the Ratepayer Advocate's proposal, accurate price signals are sent to the proper group of customers and the customers are protected from severe price . Therefore, the Elizabethtown's Monthly Purchased Gas Adjustment Charge pricing mechanism should be rejected in favor of the Ratepayer Advocate proposed pricing mechanism.

2. Single vs. Multiple BGSS Options

As discussed earlier, Elizabethtown proposes to offer two pricing options for BGSS: 1) the Fixed Price Option; and 2) the Monthly Purchase Gas Adjustment Charge. *P-13*, pp. 22-23. The Fixed Price Option should be rejected since it is a competitive service offering that utilities are expressly prohibited from offering under the Act. As explained in the generic portion of this brief, the purpose of BGSS is to insure that all gas customers can obtain natural gas service whether or not a customer has chosen a TPS, not to provide opportunities for utilities to enter the competitive market. In return for providing this service as a regulated entity, Elizabethtown is guaranteed recovery of the costs which are determined to be reasonable in providing this service. If a regulated utility is permitted to compete in the open market with non-regulated TPSs, the utilities will have an unfair advantage over TPSs offering the same types of service. Thus, Elizabethtown is requiring TPSs to compete against a company that can price gas commodity at cost and incur no risk in the event of cost fluctuations. This is precisely why the Act forbids utilities to compete with unregulated TPSs.

By allowing the utilities to offer fixed priced service, it will become harder for the TPSs to compete and differentiate themselves and their products from the incumbent utility. Elizabethtown's Director of Energy Planning Mr. Thomas Smith conceded this point in cross examination by the attorney representing Shell Energy:

- Q Let me ask you this then: Do you agree with the testimony in [sic] PSE&G witness Wohlfarth that in a competitive marketplace, third-party suppliers will have the ability to differentiate themselves by virtue of the quality and price of service they provide?
Would you agree with that?
- A I agree with that concept, yes.

Q And marketers presumably will attempt to differentiate themselves by offering alternative pricing options and value added products and services, will they not?

A I would expect they would.

Q Wouldn't you agree that to the extent a utility seeks to offer diverse BGS service and pricing options, be [sic] more difficult it becomes for the marketer to differentiate itself from the utility or from the services that the utility offers?

A That may be more difficult for the marketer but I think for the customer, they're looking for certainty - - customers have a broad band of requirements....

(T841:L6-25 to T842:L1-4)

There is a legitimate concern that TPSs will not be able to enter the market and compete with an incumbent utility when the utilities are offering its services at cost. During the cross examination of Mr. DeMoine, he confirmed that Fixed Priced Option will be based on a pass-through of pure gas costs with no profit in the proposal. T1578:L8-18. Not only will marketers find competing with the utilities' price difficult, there is also a concern that the utilities could cross-subsidize their competitive offering. **As noted by Ratepayer Advocate witness Mr. Richard LeLash,"[a] gas distribution company's fixed price or other competitive supply offerings may impede new entrants to the market because the GDC has the dominant market position and it potentially could cross-subsidize between its various supply offerings."** RA-63, p. 20. In Elizabethtown's case, Mr. LeLash's concern is substantiated by the Company's own filing that proposes to impute over and under recoveries attributable to the Fixed Price Option to the Monthly Purchased Gas Adjustment Charge (that the company structured as a provider of last resort service). P-13, p. 22. Even if the Company sets the price for Fixed Price Option below the going market rate, the Company knows that it will recover any under recoveries through its Monthly Purchased Gas

Adjustment Charge. In contrast, the TPSs must absorb their under and over recoveries. Therefore, Elizabethtown's Fixed Price Option is a non-cost based, pricing mechanism that will compete with the TPSs for customers in Elizabethtown's territory and may be an insurmountable barrier to TPSs seeking to provide competitive gas services to residential customers.

There is evidence to support the Ratepayer Advocate's conclusions that the Company structured the Fixed Priced Option to mirror the offerings that will be made by the TPSs. Customers who would like service under the Company's Fixed Priced Option must "elect" to take from this service during a sign-up period that comes twice a year from January 1-February 15 and August 1 through September 15. *P-13*, p. 23. The sign-up period that the Company proposes for TPS service is the identical period of time. *Id.* p. 7.

In contrast, the Company's Monthly Purchased Gas Adjustment Charge is structured to provide default service. Customers who do not choose the competitive Fixed Priced Option or the TPSs services or who cannot choose will be served under the Monthly Purchased Gas Adjustment Charge. *P-13*, pp. 22-23. Under Monthly Purchased Gas Adjustment Charge there is no sign-up period. As discussed fully in the next section of this brief, to make the choice of purchasing the BGSS Fixed Price Option more desirable, the Company is proposing to charge switching fees only if a residential customer chooses a TPS, but if a customer chooses to return to BGSS, the Company will not charge a switching fee. T1479:L3-T1481:L10.

As discussed in the generic section of the brief, the Act clearly prohibits gas utilities from offering competitive services. *Act*, Section 10(d). Let the TPS and the utilities' competitive subsidiaries offer fixed price options. *RA-63*, p. 20-22. There is nothing to prevent Elizabethtown from offering fixed priced service through a competitive marketing affiliate if it should so desire.

The Board should therefore reject the Company's proposal to offer Fixed Priced Option under BGSS.

3. Terms and Conditions of BGSS

a. Switching fees.

Elizabethtown's proposal to charge all customers switching fees, especially low to moderate use customers who purchase under residential and commercial tariffs, must be rejected. Except for the initial switch which is free, the Company proposes to impose a \$15 switching fee every time a residential customer switches to a TPS. *P-13*, p. 6. However, residential customers who return to BGSS will not be charged a switching fee. T1479:L3 to T1481:L10. This is clearly a discriminatory policy to obstruct the competitive marketplace and should be denied.

Whether switching fees are imposed or not will greatly impact on the development of the competitive gas market. By eliminating switching fees, customers can switch to a TPS without incurring any cost that may negate the savings that they obtained through choice.

With respect to residential customers, there is no question that as one of the customer protection standards, the Act bars utilities and TPSs from charging switching fees. The Act specifically states:

Billing standards shall include, at a minimum, provisions prohibiting electric public utilities, gas public utilities, electric power suppliers and gas suppliers from charging a fee to residential customers for either the commencement or termination of electric generation service or gas supply service.

(*Act*, Section 36a.(5))

Elizabethtown's claim in its rebuttal testimony that the above-cited provision of the Act should not be construed as a limitation on the utilities to charge residential switching fees is misguided and erroneous. T1476:L7 to T1477:L8. In fact, no other participants to the New Jersey electric restructuring proceedings has expressed an interpretation of this language from the Act that is remotely similar to Elizabethtown's. In addition, neither Public Service nor South Jersey Gas Company ("South Jersey") has asked for a residential switching fee in this proceeding. Moreover, during the March 17, 1999 Board Agenda meeting while discussing electric restructuring issues, the BPU Director of Energy, Robert Chilton made his position clear that Staff interpreted the Act to prohibit residential switching fees:

Commissioner
Armenti:

Director, the Energy Act I believe also involves the switching of fees, correct?

Mr. Chilton:

That's correct. There were proposals from utilities in the restructuring filings to impose various fees to process these switching requests and that's **expressly prohibited by the Act**. Going back to the litigation last year, there are proposals from the utilities to charge \$20 which I think at least one utility proposed. Those are basically rendered moot by the act. (Emphasis added).

(Transcript from Board Agenda March 17, 1999, Item 6B- Energy: In the Matter of the Energy Master Plan Docket No. EX94120585Y, p. 13.)

Not one of the electric utilities filed papers to contradict or challenge Director Chilton's interpretation of the Act prohibiting residential switching fees because there are no other credible interpretations of its intent.

Indeed, the testimony of Mr. DeMoine supports the conclusion that the Company's proposal

is geared towards keeping customers captive to the utility because residential switching fees only apply to customers exercising their right to choose providers other than Elizabethtown, not when they choose BGSS.

Q: Now, the \$15 fee that you would charge a customer for switching from third-party supplier A to third-party supplier B would not apply, as I understand the Company's proposal, to a customer who decides to switch back to BGS service from a third-party supplier, isn't that correct?

A: Yes.
During his initial three year period, while we are required to provide basic gas supply service, as a regulated function, I did not propose the charge.

(T1479:L 3-14)

The cross examination continues:

Q: So every time a customer exercises it's [sic] right to choose a third-party supplier, it must pay the company \$15 for the privilege but it pays nothing if it returns to the Company's same service, isn't that correct?

A: Well in the event that they are - - -

Q: Yes or no, Mr. DeMoine?

A: If they come back, they do not pay, that's correct.

Q: And that's the case even though as you just conceded, the costs incurred by the Company are the same when that customer switches whether it's switching to a new third-party supplier or the Company. Is that right?

A: This would be similar, I don't know that they're exactly the same.

Q: Roughly the same?

A: Roughly.

(T1479:L19 to T1481:L10)

The Company cannot justify charging switching fees only to customers that chooses a TPS when the cost to provide the switching service is "roughly" the same whether the customer chooses

a TPS or Elizabethtown. That proposal is clearly anti-competitive and flies in the face of the Act.

Elizabethtown's assertion that residential switching fees are not prohibited by the Act is without merit. To allow switching fees for only residential customers that are choosing TPSs and not to customers returning to Elizabethtown is inequitable and anti-competitive. For the foregoing reasons, Elizabethtown's proposal must be rejected by the Board.

Elizabethtown also proposes to continue charging \$50 switching fees to commercial and industrial customers, as its current tariff provides. T1566:L13-15. However, if one considers that many small commercial customers have low annual usage, it becomes clear that switching fees as high as \$50 will deter such commercial customers from ever leaving the incumbent utility. RA-63, p. 25. Indeed, many small commercial customers have annual usage as low as residential customers.

Public Service witness Wohlfarth stated during his testimony the following:

Q I thought you mentioned earlier that the load profile were, in fact, pretty much the same?

A Our commercial customers and our residential customers load profiles are very similar.

(T1235:L17-22)

Elizabethtown's residential and commercial customer load profiles must be similar as well. In this respect, small commercial customers require the same level of protection afforded the residential customers through the Act. For many small commercial customers, a \$50 switching fee would erode or eliminate any possible savings. The Board should not allow Elizabethtown to construct a barrier which large numbers of customers will not be able to overcome. Like the residential customers, small commercial customers should not be charged a switching fee.

b. Minimum contract period, limit enrollment periods and minimum aggregation load.

Elizabethtown's proposal to limit customers ability from freely moving from one provider of energy to another with: 1) minimum contract terms; 2) restricted enrollment periods; (3) minimum aggregation requirements are contrary to the Act and is structured to create an anti-competitive barrier for customers who may otherwise choose to purchase in the competitive market to obtain better services and prices.

According to the Company's proposal, customers will be required to stay with a TPS for a one year term. *P-13*, p. 6. It is important to note that the contract to purchase natural gas is between the customer and the TPS. It is inequitable to allow the utility to dictate a basic term of a contract when the utility is not a party to the contract. Mr. DeMoine was questioned on this very issue during his cross examination:

- Q So, your proposal in effect dictates the minimum term of service between a supplier, a third-party supplier, and its customer. Isn't that correct?
- A That is correct.
- Q Are you aware of any other industry in which one supplier could dictate the terms of service between the competing supplier and its customer?
- A I believe my cellular telephone required me to take one-year of service, that is another service.
- Q But did Sprint dictate to Motorola what the terms of Motorola's service with its customer would be?
- A I don't think that -- I don't know that answer. I don't think that would be the case. I don't believe that to be the case.
(T1453:L19 to T1454:L 12).

The utility should not have the power to dictate when the customer can purchase gas from a TPS and the duration of any associated service contract. The utility should not place unreasonable procedural hurdles to obstruct contractual relationships to which the utility is not a party.

According to the Company's proposed tariff, customers returning to BGSS after obtaining service from a TPS are also similarly locked into BGSS service for a one year period. Mr. LeLash rejected artificial barriers such as minimum service terms "since this would be discriminatory and would limit a customer's ability to seek supply choices." *RA-63*, p 25.

Under Elizabethtown's proposal, it plans to limit enrollment for the TPS service from: 1) January 1 to February 15 for services commencing April 1; and 2) August 1 through September 15 for services commencing November 1. *P-13*, pp. 6 and 23. This proposed schedule only allows a small window of opportunity for Elizabethtown's residential customers to choose a TPS. Mr. DeMoine conceded during his cross examination that customers are precluded from initiating service with a TPS 275 days out of the year:

Q Am I correct that for 275 days out of a year, a residential consumer would be precluded from initiating service from a third-party supplier under the Company's current proposal?

A Based on the math, yes, that would be correct.

(T1445:L5-11).

Further, under the Company's proposal, the limited enrollment window is exactly the same time period the Company is proposing to offer its Fixed Priced Option. Thus, Elizabethtown is proposing greatly restricted enrollment periods during which TPSs are required to compete with the Company's own competitive service.

Elizabethtown is the only gas utility in this proceeding requesting definite and limited enrollment periods. The fact that Elizabethtown is the only gas utility requiring limited enrollment periods is significant. If Elizabethtown is not ordered to have rolling enrollment like the other utilities the result will not only be anti-competitive but will also create customer confusion. While neighbors served by the three other gas utilities are signing-up for service that can commence any time of the year, Elizabethtown customers must patiently wait for their twice yearly enrollment period. Company witness Mr. DeMoine conceded that confusion may result:

Q: I believe Mr. Forshay earlier today had a similar question on minimum aggregation, but I'm going to change the scenario and use the twice yearly enrollment period as a model.

If a marketer is offering a special price for supply of gas in an advertisement that is heard or seen in Elizabethtown's service territory, but the terms of the offer expired before the Elizabethtown's enrollment, wouldn't that add to customer confusion for Elizabethtown's customers?

A It may add confusion.

(T1565:L11-23)

It is ironic that the Company claims the reason it proposes to have enrollment periods is to “avoid customer confusion” when its proposal will cause nothing but greater confusion for its customers. RA-52. This confusion is totally unnecessary. Elizabethtown even concedes that it is possible for the Company to offer continuous enrollment. According to Mr. DeMoine “[i]t is envisioned that continuous enrollment periods eventually could be and would be accommodated.”

***Id.* The evidence supports the conclusion that the Company can provide for continuous enrollment at start of gas competition in 1/1/2000, therefore, like the other gas utilities, Elizabethtown should be ordered to allow continuous enrollment.**

The record strongly suggests that the Company could offer rolling enrollment for its

residential customers. Company witness DeMoine stated that industrial and commercial customers now have continuous enrollment and will continue to do so in the future:

Q Now, no such similar limited sign-up periods currently apply to your Commercial & Industrial Transportation Programs, do they?

A No similar provisions, that's correct.

Q And such limitations would not apply to Commercial & Industrial customers beginning on January 1, 2000. Is that correct?

A No, we're not proposing to change those programs.

(T1446:L13-23).

Elizabethtown fails to realize that the Act requires all gas utilities and all customers to be ready for competition by 1/1/2000. By law utilities are required to open their territories to gas marketers. It is not an option that may or may not be exercised by the utilities as they see fit. Elizabethtown should be required to open its territory with continuous enrollment consistent with the plans expressed by the other New Jersey utilities by start of competition on 1/1/2000.

The Company's proposal also requires that all TPSs must have a minimum aggregated load of 36,000 Dth in order to serve residential customers in Elizabethtown's service territory. *P-13*, p 5. According to the Company, 36,000 Dth is equivalent to 330 residential heating customers on Elizabethtown's system. *Id.*, p. 6. A TPS must be licensed by the BPU to service customers in New Jersey. *Act*, Section 29. There is no reason to have this extra requirement above what is already provided for in the Act and the Board's Orders. Such a requirement is an anti-competitive barrier that will deter entrants to the competitive market. These entrants that may help to drive the prices of gas down even further. In addition, such a minimum aggregation requirement will only add to consumer confusion. Customers who are already served by a TPS may be cutoff from their chosen

provider by Elizabethtown because the TPS could not reach the 36,000 Dth aggregated load. Mr. DeMoine agreed that this limitation could cause problems:

Q How about now, a year later, let's say that customer's already picked Company X to serve them that's a third-party supplier and at that time they want to continue with that Company X, but because they didn't meet that 36,000 decatherm requirement, now they no longer are allowed to serve in E-town's territory, then I would like to ask the same question, would they be charged a \$15 fee to switch or be charged 120 percent if they go back to BGSS?

A To be honest with you, we did not consider that particular circumstance in the design of our program. I do not recall any conversations with anybody within the Company regarding the second year of the program, so I would concede right now that's an issue that we would have to address and get back to the parties because we've not addressed that.
(T1573:L25 to T1574:L18).

As with the Company proposed residential switching fee and enrollment periods, Elizabethtown is the only gas utility proposing to restrict marketers who do not reach a minimum level of aggregation load. It is an unnecessary restriction that serves no useful purpose other than to create barriers to effective competition by small TPSs. This proposal, like the other proposals made by Elizabethtown to hinder competition, should be rejected.

c. Higher rates to residential customers returning to BGSS.

As discussed earlier, pursuant to the Act, utilities are required to provide BGSS in their role as the provider of last resort. *Act*, Section 3. They are the default provider, to be used as a safety net for customers in the competitive environment. Elizabethtown, however, proposes to charge residential customers who return to BGSS before the end of their annual contract period, 120% of the Monthly Purchased Gas Adjustment Charge. *P-13*, p. 7. The Ratepayer Advocate believes that

this is another example of Elizabethtown's attempt to deter customers' migration from the Company's service to TPSs. There are several problems with Elizabethtown's proposal. First, the proposed rate of 120% of the Monthly Purchased Gas Adjustment Charge is not cost based. T1464: L9-21. No study was done to show that the Company will incur an incremental 20% to purchase gas for the returning customers. Elizabethtown's proposal is based on nothing more than a guess and a desire to deter choice. Prices should not be set at a level that is not based on costs actually incurred by the Company.

Second, customers who leave and later return to BGSS are not getting a service that is different in quality to customers who remained with the utility. There should not be a 20% difference in rates for the same service provided to the same class of customers during the same period. As Mr. LeLash correctly noted, punitive prices such as the 120% rate for BGSS will only deter residential customers from switching and produce a chilling effect on the competitive market. RA-63, pp. 23-24. If indeed there are additional costs, which the Company has not demonstrated in this proceeding, the Company should perhaps look to the TPSs first for any incremental cost recovery due to customers returning to BGSS because of a TPS default. *Id.* p. 25. For the foregoing reasons, the Company's proposal to charge a 120% rate to returning BGSS customers should be rejected.

B. BGSS Rates/Shopping credits

1. Proposed Rate Unbundling Methodology

As supported by Mr. Rohrbach in his direct and surrebuttal testimonies, Ratepayer Advocate believes that appropriate levels of shopping credits are an indispensable component to ensure the

success of New Jersey's restructuring programs and to establish competition in the natural gas energy marketplace. *RA-77*, p. 4, *RA-78*, p. 2. **Customers need a price to compare so that they can see the savings if they switch to a TPS. In order to see sufficient levels of savings and to encourage switching, it may be necessary to provide incentives to switch to new suppliers and rate cuts.** As noted, Elizabethtown proposes to price BGSS at direct costs, with no profit margins and ignoring gas supply costs embedded in distribution rates. T1578:L8-18. It will be impossible for TPSs, who by definition need profit margins, to compete with incumbent utilities unless a BGSS commodity cost margin is built into the rates. **Therefore the Ratepayer Advocate proposes a shopping credit which includes not only appropriate gas costs but also includes an incentive for customers to shop.**

In order to develop a proper shopping credit, it is necessary to first reflect all gas supply costs in the BGSS rate. The Ratepayer Advocate's proposed shopping credit includes the Company's gas costs adjusted to exclude sales and use taxes. *RA-78*, p. 11. Then, the Ratepayer Advocate suggests that the gas cost embedded in the distribution rates be added to the BGSS gas supply cost. Finally, an incentive of 15% of total margin sharing revenues from all sources should be added to a total shopping credit.

It must be noted that the Company did not provide fully unbundled rates as required by the Act and Board Orders in this proceeding making the actual calculation of the shopping credit difficult. Ratepayer Advocate witness Mr. Rohrbach needed to supplement the information provided by the Company with assumptions and calculations made by Shell witness Mr. Richard Hornby to provide the Board with an estimate of the shopping credit that may be appropriate for Elizabethtown. However, Elizabethtown's refusal to provide relevant information in this proceeding to allow the

calculation of an exact shopping credit for Elizabethtown's customers should not bar the Board from adopting the concept of a shopping credit as proposed by the Ratepayer Advocate. Once the Board adopts the concept of a shopping credit as a necessary means to stimulate gas competition in New Jersey, the Board can determine the appropriate shopping credit amount for all classes of customers using the most current numbers available.¹

The Company disputes the use of 15% of the margin sharing revenues as being a "subsidy." *P-16*, p. 8. However, as explained fully in the generic portion of this brief, to encourage the gas utilities to release excess capacity or to sell unused gas supply in the past, there was an incentive provided in the form of a profit for the sale of said capacity. Similarly, it is the Ratepayer Advocate's proposal to provide an incentive to consumers and TPSs to jump-start competition in the gas marketplace. As explained in the generic portion of this brief, it is an incentive that will provide a vibrant marketplace that will benefit all consumers including the BGSS consumers by driving gas commodity costs down. **The concept of shopping credits is the method chosen by the Legislature and the Board to encourage competition for the electric industry and it should be equally applicable to gas industry. Act, Section 4(b). For the forgoing reasons, the Board should adopt the concept of gas shopping credits as set forth herein and calculate the**

¹ Allocation of all the Company's gas supply costs to BGSS rates points to another issue. This may conflict with Section 10r. of the Act because Elizabethtown may have gas contracts priced above current market conditions. Mr. Miller cautioned that BGSS rates may reflect prices consistent with current market conditions and prices that the Company may be paying under contracts entered into ten years ago may not be consistent with current market conditions. T2838:L12-24. The Ratepayer Advocate is not suggesting any adjustment to reflect this at this time, but recommends that in this proceeding the Board should adopt shopping credits based on current contract prices -- although it may at some future time revisit the shopping credit if these contracts are renegotiated.

appropriate credit to be applied using the most recent numbers available provided by the Company.

In the alternative, if the concept as proposed by Ratepayer Advocate witness Mr. Rohrbach is not adopted by the Board, the Ratepayer Advocate suggests that the shopping credit be established as proposed by Ratepayer Advocate witness Mr. James Rothschild, by transferring 1% of the return on equity from the Company's distribution costs to its commodity cost of gas as more fully explained in the generic portion of this brief under BGSS/Shopping credit.

2. Lost Revenue Recovery Proposals

As also stated in the generic section of the brief, the utilities' assert that if a shopping credit is implemented as recommended by the Ratepayer Advocate, they will incur "lost revenues" as customers choose competitive supply options. They therefore contend that they should be permitted to implement an automatic adjustment mechanisms which would recover the asserted "lost revenues" without regard to their overall levels of revenues and expenses.

The utilities' lost revenues recovery mechanism is at odds with the clear objective of the Act which promotes competition. *Act*, Sections 2(a)(2); 2(b)(1). The utilities' lost revenue recovery mechanism unfairly protects them by providing a mechanism that guarantees the utilities's revenue streams without a comprehensive review of costs or revenues.

As Mr. LeLash testified in this proceeding, if the utilities believe that their revenues are insufficient they have the right to file for base rate cases.

C. Unbundling of Gas Supply Services

1. Services Unbundled

As explained in the generic portion of the brief, gas supply service can be unbundled to a number of components, including the gas commodity, upstream transportation, storage, peak shaving and balancing. The Board's Order Establishing Procedure and the Board's Order of Clarification made clear the Board's intent to examine services, including balancing services that have the potential to be competitively priced. Order Establishing Procedures, p. 2 ; Order of Clarification, p. 3.

Balancing service is a service that should be opened to competition. Allowing TPSs to provide balancing is another factor that will make choice more attractive and encourage competition. The TPSs should be able to use, on a voluntarily assigned basis, the Company's capacity, storage and peak shaving assets to provide choices to customer and to encourage a competitive market. As explained in the Ratepayer Advocate's generic arguments, the Board can provide for competition for balancing service by requiring the utilities, at a minimum, (1) to offer TPSs the option to deliver differing quantities of gas each month ("Monthly Requirement Service"), in July 1, 2000; and (2) to offer an additional option permitting TPSs to closely match their customers' actual daily quantity ("Daily Requirement Service") by October 1, 2000.

Elizabethtown, alone among the utilities, does not meet even the Ratepayer Advocate's minimum recommendation that TPSs serving all customer classes offer a Monthly Requirement Service option. Under the Company's proposal, Monthly Requirement Service is available only to TPSs serving commercial and industrial customers. T731:L6-8. As stated earlier, under

Elizabethtown's proposal, TPSs serving its residential customers are required to deliver LDDQ (i.e., a fixed amount of gas every day of the year, based upon the estimated average daily usage of their customers). *P-2*, p.9. Elizabethtown would provide the service of storing the gas during the summer, and use the stored gas during the winter when customers use more than their average daily usage; suppliers would not have the option of providing this service. *RA-72*, p. 11-12. Under the Company's proposal, Elizabethtown will retain control of the storage facilities and the peak shaving facilities barring any attempts by the TPSs to provide comparable service. *T729:L20-25*. Under cross examination, Mr. Smith conceded that a Monthly Requirement Service allows competition for balancing:

Q Now assuming that a customer is able to competently estimate it's [sic] monthly needs under the ADDQ approach, presumably the customer would lower it's [sic] levels of excess deliveries during low use months and lower it's [sic] levels of under-delivery during high use months than might otherwise occur under the LDDQ approach, correct?

A That's correct.

Q And you expect that in the normal course, this closer match of deliveries to usage should translate into a reduced need for balancing service from the Company. Is that fair to state?

A It will reduce the balancing, yes.

Q And this reduced need for balancing service should, in the normal course, permit the company to reduce the level of assets it holds to provide balancing service, correct?

A That is true.

(T789:L2-20)

As indicated in Mr. Smith's response, under Monthly Requirement Service, TPSs will deliver more gas in the wintertime when the gas is needed than under the LDDQ where the gas deliveries stay the same all year long. Obviously under LDDQ, there is a mismatch which creates unnecessary reliance on Company provided balancing service and eliminates the possibility of competition for balancing and storage services. Upon being questioned by Ratepayer Advocate about gas deliveries leveled annually, Public Service's witness Mr. Wohlfarth testified as follows:

Q What is the purpose of an annual balancing option?

A I don't really know. I don't think it makes a whole lot of sense, but I don't really know.
(T1318:L3-7)

It is unnecessarily discriminatory to residential customers to be limited to LDDQ, when the Company is able to provide Monthly Requirement Service to its other classes of customers. Therefore, Elizabethtown should give TPSs the option of Monthly Requirement Service to all customers, including residential customers by January 1, 2000. With regard to daily balancing, only Elizabethtown's largest customers are permitted to arrange to have TPSs deliver gas to the Company at the times it is actually needed. These customers are required to maintain a daily balance between the gas they use and the gas that is delivered. RA-72, p. 10-11. The Company has not proposed to offer a Daily Requirement Service to any other customer classes. As explained in the Ratepayer Advocate's generic arguments, Elizabethtown should be required to propose a Daily Requirement Service for all customers by March 1, 2000 and this should be implemented by October 1, 2000, the start of the heating season.

As stated in the generic portion of the brief, as currently filed, Elizabethtown leaves the

“storage” and “balancing” components of gas supply service bundled with the utility’s monopoly distribution service. *Id.* It is not the complete unbundling that is contemplated by the Act. In order to permit competition for these services, the utilities will have to unbundle the costs of these services and offer options to TPSs. With respect to large use customers that may have the ability to balance their own load, balancing service should be an unbundled service that can be provided by a TPS, Elizabethtown or directly by the customer. To minimize confusion for smaller customers, however, the Ratepayer Advocate witness Mr. Miller recommends that for residential and general service customers, balancing should be offered as an option to suppliers who will rebundle the balancing service into their gas supply price that they offer to customers. *RA-72*, p. 17.

2. Format of Tariffs

As discussed more fully in the generic section, Elizabethtown should be required to make its tariff more easily understood and user-friendly, in a manner which would further the goals of restructuring and competition. The shopping credit should be easily identifiable to residential customers.

D. Capacity Assignment

1. Voluntary/Mandatory Assignment

The excess pipeline and storage capacity which may result due to customer migration should be made available for assignment to the TPSs on a voluntary basis to serve Elizabethtown’s transportation customers. As the generic section of this brief already made clear, all utilities

including Elizabethtown control large amounts of pipeline transportation and storage capacity. TPSs need access to these assets in order to compete in the emerging New Jersey gas market. *RA-67*, p. 7. As customers migrate to TPSs, utilities will have excess pipeline capacity that can be made available to TPSs and to large customers. *P-16*, p. 24. Further, if the Board requires Elizabethtown to offer Monthly or Daily Requirement Service requirements, the Company will have additional excess storage capacity that can be used by the TPSs to serve their new customers. Company witness Smith conceded that under the Monthly Requirements Service (i.e., ADDQ) method the Company is more likely to have excess storage capacity:

Q Okay. It is possible that the Company may have excess storage capacity which it could release to the TPS's so that they can provide balancing services under the ADDQ method?

A That's possible, yes.
(T732:L16-20)

For this reason newly available capacity resources should be offered to customers and to TPSs first, priced at Elizabethtown's weighted average cost of capacity. *RA-67*, p. 8.

Elizabethtown's proposal to require mandatory capacity assignment to TPSs that serve residential customers is an unnecessary measure that inhibits the growth of the competitive market and should be rejected by the Board. In the present proceeding, only two utilities propose mandatory capacity assignment, Elizabethtown and South Jersey. Elizabethtown is proposing to compel the TPSs to take assignment of capacity based primarily on two asserted justifications: 1) the need to maintain reliability; and 2) its potential for incurring stranded costs if assignment is not mandatory. *P-16*, p.32. Neither justification is valid.

At the outset, it is important to note that in the five years in which unbundled service has

been available to Elizabethtown's commercial and industrial customers, the Company has never required mandatory capacity assignment, and it is not now proposing mandatory assignment for these customers. T743:L19 to T744:L4. Elizabethtown treats the TPSs serving residential customers differently from the TPSs serving industrial and commercial customers without explaining such a discriminatory practice. The Company does not claim that TPSs serving residential customer are less reliable or more prone to disregard their agreements to deliver gas when necessary compared to the TPSs serving commercial and residential customer classes. Elizabethtown's decision to require mandatory capacity assignment only to TPS serving residential customers is wholly arbitrary and another barrier erected against development of a retail competitive marketplace. Moreover, it is telling that Public Service and New Jersey Natural do not believe that they require mandatory capacity assignment to maintain reliability or to mitigate stranded costs as Elizabethtown argues. There is no evidence that Elizabethtown's system is sufficiently different from those of Public Service and New Jersey Natural to explain why Elizabethtown would need to be treated differently from its fellow gas utilities.

As discussed fully in the generic section of this brief, mandatory capacity assignment is not needed to insure reliability because tools such as economic penalties are available to deter under-delivery of gas by TPSs. For example, the two utilities who do not propose mandatory capacity assignment have stated on the record that economic penalties have worked in the past and are sufficient to deter TPS misconduct. Public Service witness Wohlfarth agreed that it was the experience of Public Service that economic penalties applied to TPSs' delivery failures have been successful in assuring reliability of TPS delivery. (T1183:L22 to T1184:L3). Similarly, Mr. Kevin Moss of NJ Natural testified to the following:

From the outset, New Jersey Natural Gas has not required marketers to take assignments of its capacity. Voluntary assignment allows marketers to construct their own portfolios and it is important to their ability to offer savings to customers. Therefore, compared with mandatory assignment of capacity, voluntary assignment typically leads to faster migration.

NJ-1, p. 14.

It is the testimonies of two gas utilities' witnesses that economic penalties are sufficient to insure reliability, even in the winter heating seasons when demand for natural gas is high. In fact, even though Elizabethtown ardently argues that economic penalties are an ineffective way to insure reliability, it nevertheless includes an economic penalties provision in its proposed tariff. *P-14*.

In response to the overwhelming evidence against its proposal, the Company tries to confuse the issue by arguing that economic penalties do not provide the physical gas needed in the event the TPS fails to deliver. *P-8*, p. 33. As stated in the generic portion of this brief, the purpose of economic penalties is not to provide gas to the utilities if TPSs under-deliver gas. Economic penalties are effective as a deterrent and are used as a preventive measure so that the utilities do not have to scramble to obtain gas at the last minute during the winter season because TPSs under-deliver. This is the very point made by Mr. Miller during his re-direct examination:

- A I think Mr. Megdal's questions were whether penalties would help get gas through if there's no capacity, and that misses the point that penalties or the threat of penalties are the disincentives for bad behavior. They're designed to tell third-party suppliers that they need to make arrangements in advance to make sure that when gas has to be delivered, it will be there. Obviously, if one assumes that they ignore the threatened penalties, don't make the proper arrangements imposing the penalties, they won't get the gas through. But you put the penalties in the tariff, the suppliers know about it, and they understand that they better make the proper arrangements or they'll have to pay the penalties.

Q In your opinion, what has to be done to get sufficient gas to South Jersey Gas Company's city gate?

A In order for the gas to be there, first there has to be sufficient pipeline capacity available to move enough gas to the city gate to serve whatever loads are behind the city gate, that is to meet the requirements.

Second, one has to be sure that the persons, the shippers who control capacity are using it to bring gas to the city gate rather than taking that capacity and using it to bring gas to some other location, to the extent that they could, even though they have a right to bring it to South Jersey.

(T2870:L4 to T2871L:12)

In addition to economic penalties utilities have other tools available to insure reliability, including short-term (daily) gas supply purchases; storage services; no-notice service; peak shaving facilities; and recall of released interstate pipeline capacity. As a last resort, utilities can issue operational flow orders or order a consumption cut back (curtailment). *RA-67*, p. 13.

Another tool that utilities can use to insure reliability without resorting to mandatory capacity assignment is the concept of “comparable capacity.” As defined by Mr. Mierzwa, comparable capacity is capacity which reasonably compares the reliability of the utility’s existing capacity for effectuating deliveries consistent with scheduled gas requirements under each utility’s customer choice program. *RA-67*, p. 15. Comparable capacity requires TPSs to demonstrate that they have reserved capacity which is the functional equivalent of the capacity the gas utility utilized to serve converting customers. *Id.* If a TPS serving the customers of a gas utility elects to no longer serve those customers, it can be required to give the gas utility the opportunity to take back the capacity released to the TPS. *Id.* Even though Elizabethtown vehemently argued for the need for mandatory capacity assignment, the Company later conceded that comparable capacity is an acceptable alternative to mandatory capacity assignment under certain circumstances. *P-16*, p. 34. Mr. Smith

states in his prefile rebuttal testimony that assuming that certain conditions are met, "... I believe that comparable capacity would be an acceptable substitute for mandatory capacity assignment" *P-16*, p. 34.

It must be also noted that, because there are other tools to assure reliability, there is also no need for Elizabethtown to maintain capacity to "back-up" TPSs. The Company stated during cross examination that it requires back-up capacity for certain customers. T867:L3-17 As explained in the generic portion of the brief, back-up pipeline capacity is not only unnecessary but expensive and will serve to greatly reduce or may even wipe out any savings which may be realized. Economic penalties are a reasonable measure that is not as costly and therefore should be adopted. *RA-67*, p. 16.

Elizabethtown's argument that it will incur stranded costs if mandatory assignment is not permitted is also unsupported by evidence provided by the Company in this proceeding. In Mr. Smith's rebuttal testimony, he claims that by releasing the excess capacity incurred due to migrating residential customers, Elizabethtown will only realize 70 cents of revenue for each dollar of cost. *P-16*, pp. 24-25. Mr. Smith claims that the revenues it can realize from selling the excess capacity are less than the costs it incurred to purchase the capacity "because it has very little value in the summertime and in the wintertime when you are releasing it, you are releasing capacity subject to regulatory caps on the price." T735:L22 to T736:L5. If mandatory capacity assignment is not approved by the Board, the Company proposes to recover the lost revenues caused by the migration of customers by increasing the balancing rate charged to residential RTS customers. *P-16*, p. 25.

First, as noted Elizabethtown instituted voluntary capacity assignment for the unbundled commercial and industrial customers during the past several years and it has not requested stranded cost recovery incurred due to the migration of any commercial and industrial customers nor has it requested a change in the tariffs so that TPSs serving industrial and commercial customers are subject to mandatory capacity assignment in the future. T1624:L4 to T1625:L4 There is no reason to believe that the Company will incur stranded costs for migrating residential customers when this has not occurred for industrial or commercial customers.

Second, although Mr. Smith claims that his “estimate” that the Company will only recover 70 cents on the dollar is based on Elizabethtown’s “experience in releasing capacity over the last three years” the Company provided no evidentiary support for this. T735:L19-21. The Company did not submit capacity release revenue data to support its assertion that it was incurring losses in the past due to excess capacity release. It should also be noted that there are two proceedings currently before FERC to investigate the price caps for the long term and short term transportation market. FERC Docket Nos. RM98-10-000 (short term transportation) (RAA 82) and RM98-12-000 (long term transportation) (RAA 80). The outcome of the proceedings may remove the price caps for interstate transportation of gas. If FERC removes the price caps, especially during peak periods, the utilities may be able to sell excess capacity for higher prices than what they may be able to sell for now.

In sum, the Company failed to provide evidence to support its conclusion that it will incur stranded costs. As discussed in the generic testimony, with respect to the issue of stranded costs, the Board should apply strict standards requiring a showing of mitigation before Elizabethtown is permitted to propose mandatory assignment or is granted other stranded cost recovery mechanisms.

As explained, the Company should be required to show that it has pursued all means available to the Company to mitigate the stranded costs. There should be a thorough investigation of all stranded costs claims as explained in detail in the generic testimony of Mr. Galligan and Mr. Mierzwa. *RA-67*, p. 22. Finally, if Elizabethtown should be able to demonstrate stranded costs in an evidentiary proceeding, it should not be able to continue to obtain a share of revenues derived from capacity release and off-system activities as it currently does since the presence of these revenues is likely to be a result of its changing capacity portfolio. *Id.*

2. Other Issues

In the past, to encourage the gas utilities to release excess capacity, utilities were permitted to share in the margins from the release of such capacity and from off-system sales using the capacity. As stated in more detail in the generic section of this brief, the existing margin sharing arrangements contain incentives for utilities to “stockpile” capacity rather than making it available to the competitive market. Elizabethtown’s current margin sharing mechanism should be reviewed within the next year and, if necessary, modified so that it is consistent with the objective of the Act.

E. Societal Benefits Charge (“SBC”)

1. Items Recoverable Through the SBC

Pursuant to Section 12 of the Act, the utilities are permitted to recover some or all of the following costs through the SBC:

- The costs for social programs authorized prior to April 30, 1997;
- The costs of demand side management (“DSM”) programs authorized prior to April 30, 1997;

- Manufactured gas plant remediation (“MGP”) costs; and
- The natural gas utilities’ share of the costs of the comprehensive consumer education program established by the Board pursuant to Section 36 of the Act.

(Act, Section 12(a))

While Elizabethtown identified the net DSM costs of \$1,450,000 and MGP costs of \$130,000 and moved them out of base rates, other costs to be recovered through the SBC have not been identified by the Company. *P-13*, pp. 28-29. For example, Elizabethtown did not identify any existing social programs approved by the Board prior to April 30, 1997 or take those costs out of base rates. T1586:L24 to T1588:L11. These costs include but are not limited to low income uncollectible costs and winter moratorium. Continuation of these programs, especially as we enter a competitive environment is absolutely necessary to safeguard the welfare of low income customers. Therefore, Elizabethtown should be required to identify and quantify its social programs, including the proper level of uncollectibles, so that these costs may be included in its SBC. The quantification of social program costs is important because their inclusion in the non-bypassable SBC will assure the continued funding of social programs. *RA-62*, p. 32.

The Act also mandates that the cost of the comprehensive consumer education programs are to be recovered through SBC. However, Elizabethtown failed to quantify its initial cost factors or provide even a description of the customer education programs to be implemented shortly. Elizabethtown’s claim that they were unable to determine the costs that will be incurred for education because it has not started the education programs or expended any money as of the date of the testimony’s filing is unconvincing. *P-13*, 31. Corporations the size of Elizabethtown must project their expenditures at least a year ahead. It is very unlikely that Elizabethtown has no idea what the education costs will be when competition is to start only a few short weeks away. In fact,

Mr. DeMoine did concede during his cross examination that some money for education has been spent. He stated that out of approximately \$450,000 to \$475,000 budgeted for the statewide campaign the Company spent \$198,000. T1601:L12-20. Detailed descriptions of the specific consumer education activities the Company proposes to include in the SBC for its “grass roots” campaign are still needed. Without these descriptions it is impossible to determine the costs on their appropriateness for SBC rate recovery. Therefore, the Board should require Elizabethtown to provide, as soon as possible, descriptions of its education programs and detailed itemizations of costs that have been incurred to date and projected for the future.

There are specific costs Elizabethtown proposes to include in the SBC that are contrary to the provisions of the Act and should not be permitted to be included in the SBC by the Board. The costs Elizabethtown improperly added to the SBC include incremental costs associated with implementation of full unbundling. *P-13*, pp.26-30. As explained in the generic section of the brief, the SBC should not be made a “a catch all” cost recovery mechanism where any and all costs identified by the utilities can be recovered. The costs that can be recovered through the SBC should be limited to those elements specifically set forth in the Act. Costs associated with the transition to an unregulated environment were not specifically set forth in the Act as being recoverable through the SBC therefore, including these costs in the SBC should be rejected.

2. Proposed Two-Way Interest

Proposals to allow recovery of interest on under-recovery balances for costs included in the SBC should be addressed on a component-by component basis, and “one-way” interest should be preserved at least for those components on which the utility is not now permitted to recover interest on under-recovery balances. *RA-63*, p. 33.

Elizabethtown's attempt to apply interest to its unamortized MGP related costs should not be permitted in this proceeding. In fact, the Board made a determination on this very issue in a past Order, *I/M/O the Petition of Elizabethtown Gas Company, A Division of NUI Corporation for Authority to Amend its Tariff for Gas Service to Include a Manufactured Gas Plant Remediation Clause*, Order Adopting Stipulation BPU Docket No. GR95090440 (Order dated 8/1/96). In the MGP proceeding, the Board approved the stipulation entered into by the parties, stating:

The only outstanding issue not finalized by this Stipulation is that pertaining to Elizabethtown's sharing, if any, of MGP remediation costs. The Stipulation does permits [sic] Elizabethtown to accrue, but not recovery in rates, carrying costs on the unamortized interest rate on current medium term notes issued by comparable gas utilities. It also allows, without prejudice to any parties' position with respect to such request, for Elizabethtown to seek recovery of such deferred carrying costs in any subsequent base rate case or similar proceeding.

The Board has never authorized Elizabethtown to recover MGP carrying costs and this issue was deferred until Elizabethtown's next base rate case by the Board. *Id.* Although the Company would argue that the present proceeding is the "similar" proceeding as provided for stated in the Order, it is clear that the Company's arguments are without merit. Elizabethtown did not submit a cost of service study or cost allocation model during this proceeding. In fact, Elizabethtown's witness Robert Clancy, Assistant Controller for NUI Corporation, even rejected the recommendations made by NJBUS to file a base rate case within six months of the Board's Order because of the additional work and the expense necessary to file a base rate case. *P-15*, p. 13-15. Mr. Clancy's assertion that a base rate case started so soon after the end of this proceeding would be a costly endeavor further supports the Ratepayer Advocate's conclusion that the gas unbundling

proceeding is not the type of proceeding that the Board envisioned in the 1996 MGP proceeding. Further, when Mr. Clancy stated his objections to NJBUS's proposal for a base rate case 6 months after the conclusion of this proceeding, Elizabethtown did not assert that a base rate case so soon after this proceeding would be redundant.. Clearly, the two types of proceedings are different. Therefore, Elizabethtown should not be permitted to recover MGP carrying costs in this proceeding.

Currently, pursuant to a Board approved stipulation *I/M/O the Petition of Elizabethtown Gas Company, A Division of NUI Corporation, to (1) Review its Levelized Gas Adjustment Clause; (2) Revise its Weather Normalization Clause Rate; and (3) Revise Its Demand Side Management Adjustment Clause Rate*, BPU Docket No. GR96080574 et. al. the Company will not include interest on under and over recoveries in its DSM rates until the Company is permitted to revise its base tariff rates reflecting the removal of DSM costs. At the time of the stipulation, base tariff rates could only be changed through base rate cases. As stated earlier, this proceeding is not a base rate case. Therefore, there is a legitimate question whether this proceeding is the proper venue to address the interest on over and under recoveries as contemplated in the stipulation or whether this issue should be addressed in another proceeding such as the Comprehensive Resource Analysis proceeding now before the Board. *I/M/O The Filing of the Comprehensive Resource Analysis of Energy Programs Pursuant to Section 12 of the Electric Discount and Energy Competition Act of 1999*, BPU Docket No. 99050353.

3. Interest Rate

To the extent the Board allows interest on under-recoveries of SBC, it would be more appropriate to use a short- or intermediate-term debt rate to be consistent with the Board's Orders in the electric restructuring proceeding as more thoroughly addressed in the generic portion of the

brief. T2183:L17-21; T2184:L11-17.

4. Deferred Accounting

The concept of permitting Elizabethtown to defer all costs that are recoverable under SBC must be rejected. *RA-63*, p. 32. Because of the ratemaking implications of deferred accounting, the Board should decline to grant this type of broad authorization. As more thoroughly addressed in the generic section of the brief, deferred accounting should be allowed initially only for those SBC components for which there is an existing Board Order authorizing deferred accounting.

5. Mechanics of SBC

As discussed in the generic section of this brief, the Act does not specify how often or in what manner SBC is to be trued-up, however, costs that are incorporated into SBC, such as DSM and MGP remediation costs are currently reviewed and reconciled on an annual basis as a part of the Company's LGAC review . Therefore, the SBC should be reviewed and reconciled in the successor proceeding to be established to review the Company's BGSS rates. *RA-23*, p. 33.

6. Applicability of the SBC

As discussed fully in the generic section of the brief, the Act clearly mandates that the SBC be applied to all electric and gas utility consumers. The Act states:

Simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. section 5 of this act, the board shall permit each electric public and gas public utility to recover some or all of the following costs through a societal benefits charge that shall be collected as a non-bypassable charge imposed on **all electric public utility customers and gas public utility customers**, as appropriate. (emphasis added).

(*Act*, Section 12(a))

There is nothing in the Act that permits exemptions of special classes of customers. SBC should be a cost that should be borne equally by all customers as a cost to do business in New Jersey - a cost that which benefits all New Jersey residents. The Act is clear that the SBC is a “universal” charge that must be applied to all gas and electric customers. This provision requires the elimination of the currently existing exemptions and special rates.

F. Customer Account Services

1. Required Cost Data

In order to have a competitive marketplace where consumers can have access to a variety of services and lower gas prices, it is critical to unbundle costs components of competitive or potentially competitive services properly. This is exactly the reason the Act required that the BPU “order each gas public utility to unbundle its rate schedules such that discrete services provided, which were previously included in the bundled utility rate, are separately identified and charged in its tariffs.” *Act*, Section 10. Despite this clear intent of the Act, the utilities, including Elizabethtown, failed to identify the costs of discrete components of its rates. The failure of the utilities to provide such data led the Board to issue an Order of Clarification to force the utilities to comply with the spirit and the letter of the Act.

As stated by the Board:

it was and is the Board’s intent to utilize this proceeding to fully examine unbundled rates for transportation service, gas sales service and all services, such as balancing services and **customer account services**, that have the potential to be competitively provided. (emphasis added).

Order of Clarification, p. 3.

The utilities were instructed to provide the unbundled costs of customer account services within 10 days of the date of the Order of Clarification. The information provided by Elizabethtown in “response” to the Order of Clarification is still insufficient in many respects. Elizabethtown did not present a study of its average embedded or fully allocated costs of metering, billing and other customer account services. *RA-75*, p.4; *RA-68*, p.14. The Company provided only incomplete avoided costs. *P-14*, p. 8. In order to remedy these deficiencies, Elizabethtown should be required to present a complete avoided cost study, and submit a complete average embedded or total cost study. As Mr. Miller explained in his generic surrebuttal testimony, both embedded and avoided cost information will be needed when the Board determines which customer account services to unbundle, and establishes rates for those services. *RA-75*, p. 5. Because of the potential benefits of opening these services to competition, the utilities should be required to submit the necessary information promptly, to avoid any delay in the Board’s determinations regarding these services.

When questioned about the Company’s failure to provide information about the discrete components that comprise customer account services as required in the Order of Clarification, Mr. DeMoine responded as follows:

Q In other words, you still stand by your earlier responses to our Data Request that the Company has not taken a position as to whether those services are in fact discreet [sic] services?

A My recollection, and this goes back to discussions with Counsel, is that the Act is not clear on what customer account services are.
(T1555:L11-19).

If the Company was unclear as to how to identify and categorize costs under customer account services, it should have requested further clarification from the Board. Elizabethtown, however, did not ask for such clarification apparently hoping that its ignorance would somehow

shield it from responsibility. The Company also stated in its rebuttal testimony that it could not see many of the customer account services being opened to competition except for billing. *P-14*, p. 7. The Board and not the utilities will determine the question of which services will be competitive in this proceeding. To make such a blanket statement and not cooperate with the investigation of Elizabethtown's costs is to usurp the Board's powers to determine what is a competitive service. The Company should not be allowed to withhold information needed by the Board to decide whether certain customer account services should be competitive. Elizabethtown's lack of effort to comply with the Act and the Board Order illustrates a reluctance to move forward into the competitive environment that should not be permitted.

2. Unbundled Bill Credits

No Position Taken On This Issue By Ratepayer Advocate

G. Other Recommendations

1. Aggregation

As the generic portion of the brief addresses, customers with low to moderate gas use can make themselves more attractive to TPSs by aggregating their load. The Ratepayer Advocate has encouraged aggregation, especially government aggregation throughout the energy restructuring proceedings as means whereby residential and small commercial customers can have access to the benefits of competition. Therefore, in order to facilitate government aggregation in this State, the utilities should be required to make the following information available to customers and to

government aggregators:

- Within two weeks of receipt of a customer's request, natural gas utilities should provide the usage data (for residential) or load profile (for commercial and industrial customers) for the past 12-month period to any customer making such a request.
- Gas utilities should provide aggregate load profiles and an address listing of gas customers by rate class and by municipal or county jurisdiction. At a minimum, the gas utilities must agree to provide such data by zip code classifications, and any provided data should be in electronic form.
- Natural gas utilities should maintain and disseminate a list of licensed third-party suppliers operating in their service area to their customers twice a year, and they should maintain a current TPS listing on their Internet web site.
RA-63, p. 26-29.

2. Universal Service

The Act provides that a Universal Service Fund ("USF") be established to insure the establishment and continuation of social programs as the Board finds appropriate. *Act*, Section 12 (b). As the generic section of the brief states, it is imperative that the social programs are fostered and protected in order to assist low income consumers, especially now during restructuring of the energy industry. Universal Service was included within gas unbundling proceedings in states like Ohio. In 1998, the Ohio Commission directed three of its gas utilities with unbundling programs to issue requests for proposals to provide gas aggregation programs for customers under the Percentage of Income Payment Plan ("PIPP"). *In the Matter of Commission's Investigation of the Customer Choice Program of Columbia Gas of Ohio*, Case Nos. 98-593-GA-COL *et al.* Finding and Order at 24-26 (June 18, 1999). (RAA 74) Like Ohio, we must make sure that low-income and other special needs consumers share in the benefits of competition. For this reason, the Board should establish a specific timetable for the submission and consideration of universal service proposals, and their implementation.

III. CONCLUSIONS

For all the foregoing reasons, the Ratepayer Advocate respectfully requests that the Board adopt the following recommendations:

- ! Elizabethtown should be required to offer only one BGSS option, the Monthly Purchased Gas Adjustment Charge.
- ! Elizabethtown's proposal to charge residential customers a \$15 switching fees is in violation of the Act should be rejected. Elizabethtown's proposal to charge \$50 to small use commercial customers is an anti-competitive barrier and should also be rejected.
- ! Elizabethtown's proposal to have a minimum contract period and limit enrollment periods for BGSS and RTS is contrary to the Act, will create an anti-competitive barrier for customers to enter the competitive market and should be rejected. Elizabethtown's proposal to require minimum aggregation should also be rejected.
- ! Elizabethtown's proposal to charge 120% of the BGSS Monthly Purchased Gas Adjustment Charge to residential customers returning to BGSS is not supported by the record, punitive on its face and should not be permitted.
- ! The concept of shopping credits is the method chosen by the Legislature and the Board to encourage competition for the electric industry and should be adopted for the gas industry as well. The Board should adopt the concept of gas shopping credit as set forth herein and calculate the appropriate credit to be applied using the most recent numbers available from Elizabethtown.
- ! Any proposal for recovery of lost revenues due to the implementation of a shopping credit should be denied in this proceeding and the utilities should avail themselves of a base rate case proceeding if revenues are insufficient.
- ! Elizabethtown should adopt a structure that allows for TPSs to provide balancing service to all classes of customers. Elizabethtown should give TPSs the option of a Monthly Requirement Service to all customers, including residential customers by January 1, 2000 with Daily Requirement Service options by the winter season 2000-2001.

- ! Elizabethtown should be required to make its tariff easier to understand and user-friendly, in a manner which would further the goals of restructuring and competition. The shopping credit should be easily identifiable.
- ! Elizabethtown should offer have voluntary capacity assignment. The Board should reject Elizabethtown's proposal for mandatory capacity assignment. Comparable capacity should be used if other tools are not adequate to assure reliability. Elizabethtown's claim that it will incur stranded costs if mandatory capacity assignment is not permitted is not supported by the evidence presented. There should be a thorough investigation of all stranded costs claims before any stranded costs are recovered by the Company.
- ! All margin sharing arrangements should be reviewed within the next year.
- ! Elizabethtown should be required to identify and quantify its social programs, including the proper level of uncollectibles, so that these costs may be included in its SBCs. Elizabethtown should also provide descriptions of its education programs and detailed itemized costs that have been incurred to date and projected into the future. The SBC should not include a "catch all" cost recovery mechanism.
- ! Proposals to allow recovery of interest on under-recovery balances for costs included in the SBC should be addressed on a component-by component basis, and "one-way" interest should be preserved at least for those components on which the utility is not now permitted to recover interest for under-recovery balances. No interest on MGP and DSM costs.
- ! If the Board allows interest on under-recoveries of the SBC, it would be more appropriate to use a short- or intermediate-term debt rate to be consistent with the Board's Orders in the electric restructuring proceeding.
- ! The Board should reject deferral of costs that are recoverable under SBC unless specifically authorized. The SBC should be reviewed and reconciled on an annual basis in LGAC proceedings.
- ! The SBC must apply to all electric and gas utility consumers with no special exemptions.
- ! Elizabethtown should be required to provide both avoided and embedded cost data for customer account services in a timely and complete manner to avoid any delay in the Board's determinations regarding these services.
- ! Elizabethtown should be required to make information available to government aggregators and to consumers who need the information to facilitate government aggregation.

- ! The Board should establish a specific timetable for the submission and consideration of universal service proposals and their implementation.
- ! The Board should reject Elizabethtown's proposal to require minimum aggregated load as a prerequisite for TPSs to provide service to customers in the Company's territory.

Respectfully submitted,

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RATEPAYER ADVOCATE

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