



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE)
ELECTRIC AND GAS COMPANY FOR APPROVAL TO)
OFFER NEW APPLIANCE SERVICE PRODUCTS AND/OR)
SERVICES IN ACCORDANCE WITH N.J.A.C. 14:4-3.6(a))
AND (g))
)
) DOCKET NO. GO12030188

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Alexander C. Stern, Esq., Public Service Electric and Gas Company

BY THE BOARD:

By this Decision and Order, the New Jersey Board of Public Utilities ("Board") considers an Initial Decision with respect to a petition filed by Public Service Electric and Gas Company ("PSE&G" or "Company") requesting approval of proposed new appliance product and/or service offerings to be made available to residential customers ("Petition").

BACKGROUND

On March 1, 2012, PSE&G filed the Petition requesting Board approval to expand its residential repair and replacement parts service contracts to include heat pumps, pool heaters, ductless heating and cooling systems ("mini splits"), and natural gas grills; expand its existing full replacement service offerings to include heat pumps and ductless mini splits, and provide a "Home Protection Service Contract" to include residential electric, sewer, water line, and plumbing protection offerings. PSE&G claims that its customers have an interest in purchasing additional such products and/or services. Petition at 3.

As such, the Company seeks the Board's approval to offer these new appliance products and/or service contracts. A proposed "Replacement Parts Service Contracts" would cover the cost of the repair and the replacement of specified parts for heat pumps rated by the manufacturer at five tons or less, residential pool heaters with an input rating of less than 425,000 BTUs on the manufacturer's nameplate, mini splits, and residential natural gas grills. The proposed "Home

Electric System Protection Service Contract” would cover inside electric line repairs to outlets, switches, fuses, breakers, and inside wiring; the “Home Sewer Protection Service Contract” would cover the repair or replacement of the sewer drain line; the “Water Line Protection Service Contract” would pay for the repair or replacement of water service lines; and the “Home Plumbing Systems Protection Service Contract” would cover the repair and replacement of the key components associated with the home’s internal plumbing system. Petition at 4-5.

PSE&G states that, in addition to the provision of traditional utility services, it currently also provides, on a competitive basis, Appliance Repair and Maintenance Services (also known as, “APSO Services”), which currently include pool heaters and gas grills. The APSO Service covers inspection, repair, adjustment and the replacement of defective parts for residential and small industrial and commercial customers. According to the Petition, this service is performed by PSE&G technicians. Replacement Parts Service Contracts cover the cost of the repair and replacement of specific parts including parts for water heaters, central house heaters central air conditioners, kitchen and laundry appliances (including stoves, cooktops, ovens dishwashers, washing machines and dryers - standard and elite coverage), gas piping, gas fireplaces, rooftop heating and electric rooftop and central air conditioners. PSE&G also has a long history of performing space and water heating, electric central A/C, white goods (refrigerators, freezers, ranges, dishwashers, ovens, washers, and dryers) and gas and electric repair services. PSE&G repairs and replaces parts under these contracts but does not sell new appliances. P-2 at 4.

The last proposed appliance service product line is PSE&G’s Water Heater, Central Heater and Central Air Conditioning Replacement Service. This is a replacement service whereby the appliance equipment is removed and new appliance equipment is installed which the Company maintains is in accordance with the provisions of N.J.S.A. 48:3-55 and 58. According to the Petition, repairs involving the replacement of parts, non-safety related services and/or full appliance replacement services are offered by the Company for additional charge pursuant to PSE&G’s Board approved appliance service tariff filed in accordance with the Board’s various Orders approving PSE&G’s appliance service product offerings. The majority of the existing program work is performed by PSE&G’s utility workforce, with the exception of the water heater replacement work which is performed by outside contractors retained by PSE&G.

In the Petition, PSE&G asserts that the proposed appliance service offerings and products will be (i) competitive; (2) consistent with the standard for competitive products and/or services set forth in the Electric Discount and Energy Competition Act (“EDCEA”), N.J.S.A. 48:3-49 to -109; (iii) will not adversely impact PSE&G’s ability to offer non-competitive services to its customers in a safe, adequate and proper manner and, in all instances where resources are jointly deployed to provide competitive and non-competitive service, should resources constraints arise, the provision of regulated utility services will receive the higher priority; (iv) will be offered in a non-discriminatory manner to all customers; (v) the price charged for each new product and/or service offering will equal or exceed the fully allocated cost to PSE&G to provide each new competitive product and/or service and will not otherwise result in cross-subsidization. Petition at 5.

PSE&G states that the Board has established a system whereby the Company’s appliance service business revenues are treated above-the-line for ratemaking purposes and credited to ratepayers as part of the Company’s gas base rate filings. PSE&G argues that the gross profit earned by its appliance service business (“ASB”) have enabled PSE&G to attract and maintain a highly skilled labor force that is capable of providing competitive services while also assuring sufficient resources are available to ensure safe, adequate and proper utility service. PSE&G’s

costs for providing existing approved residential service contracts are based on the direct labor and material charges incurred by each contract with allocated overhead and marketing costs to arrive at the total cost for each contract offering. The price for any appliance service as reflected in the tariff equals or exceeds the fully allocated cost to the Company to provide the service so that it will not result in cross subsidization. The Company commits that the same pricing process will be applied to the proposed new offerings. According to the Company, the appliance service business has enabled it to attract and maintain a highly-skilled labor force that is capable of providing competitive services while also assuring sufficient resources are available to ensure safe, adequate and proper utility service, and has also enabled PSE&G to provide employment to outside contractors and vendors which has and hopefully will continue to benefit New Jersey's economy. Petition at 6-7.

PSE&G states that in compliance with N.J.A.C. 14:4-3.6(b), the proposed new products and/or service offerings are related to customer and public safety and reliability of non-competitive utility services, and are substantially similar to products and/or services that are already being offered. It also claims that pursuant to N.J.A.C. 14:4-3.6(g), the proposed product and/or service offerings are competitive, are consistent with the standards for competitive products and/or services set forth in the EDECA, will not adversely impact PSE&G's ability to offer non-competitive services to its customers in a safe, adequate and proper manner and, in all instances where resources are jointly deployed to provide competitive and non-competitive services and resource constraints arise, the provision of safety- and reliability-related and non-competitive services will receive the higher priority. As well, the proposed products and services will be offered in a nondiscriminatory manner to all customers, and the price charged for each new product and/or service offering will equal or exceed the fully allocated cost to PSE&G to provide each new competitive product and/or service and will not otherwise result in cross-subsidization.

PROCEEDURAL HISTORY

The parties in this proceeding include PSE&G, Board Staff ("Staff") and the New Jersey Division of Rate Counsel ("Rate Counsel")(collectively referred to herein as the "Parties"). In support of the Petition, PSE&G submitted the direct testimonies of Jorge L. Cardenas and Stephen Swetz. The Board transmitted the matter to the Office of Administrative Law ("OAL") as a contested case, where it was filed on June 18, 2012, and assigned to the Honorable Gail M. Cookson, Administrative Law Judge ("ALJ"), on June 29, 2012. On July 24, 2012, ALJ Cookson issued a Case Management Order setting the issues as follows:

Whether the new competitive products and/or services that PSE&G seeks approval to offer, including, but not limited to, service contract offerings for residential heat pumps, pool heaters, natural gas grills, HVAC systems and other products and services, will not result in cross-subsidization from its regulated utility service, compromise its provision of safe, adequate and proper utility service; impose unjust preferences, discrimination, or classifications or are otherwise lawful and consistent with the rules, regulations and orders of the Board of Public Utilities.

On November 16, 2012, Rate Counsel filed the direct testimony of its witness in this matter, David E. Peterson. RA-1. On November 19, 2012, Rate Counsel filed a motion for partial summary decision to dismiss the following new programs proposed by PSE&G: (1) Home Sewer Line Protection; (2) Home Water Line Protection; (3) Home Plumbing Systems Protection; (4) Home Electrical System Protection, and (5) Installation of new Mini-Split

Systems. On November 30, 2012, PSE&G filed its opposition to Rate Counsel's motion. On December 10, 2012, PSE&G filed the rebuttal testimonies of Cardenas and Swetz. P-4, P-5.

On December 18, 2012, ALJ Cookson issued an Order on Partial Summary Decision Motion in which she denied without prejudice Rate Counsel's motion that the aforementioned five offerings be stricken from the scope of the evidentiary hearings. ALJ Cookson determined that the issues could not be decided as a matter of law, it was necessary to fully develop a factual record on the entire petition filed by PSE&G, and that Rate Counsel could renew its arguments on the basis of the fully-developed factual record.

The Parties proceeded to an evidentiary hearing on January 9, 2013. Following the completion of the hearings, the Parties submitted initial briefs on February 8, 2013. PSE&G and Rate Counsel submitted reply briefs on March 1, 2013. On April 5, 2013, ALJ Cookson issued an Initial Decision in this matter. Exceptions and reply exceptions to the Initial Decision were filed with the Board on April 18, 2013 and April 23, 2013, respectively, by PSE&G and Rate Counsel.

POSITIONS OF THE PARTIES:

PSE&G

In its initial brief, PSE&G cited to several cases where the Company maintained that the Board found a nexus between competitive appliance services and the provision of safety services, and other cases where the Board recognized that utilities may engage in competitive services. Specifically, PSE&G cited to the Board's decision in In re New Jersey Natural Gas Company Petition Seeking Permission to Revise Rates for Appliance Service, BPU Docket No. GR91010051 (Order dated June 4, 1992), where the Board concluded that "[w]hile the Board has broad authority to regulate the activities of public utilities, it has a long recognized that 'regulated utilities may engage in any reasonable legitimate business endeavors that are not directly or indirectly prohibited by law.'" PSE&G Initial Brief at 14 (citing, Watkins v. Atlantic City Electric, 67 PUR3d 483, 491 (1967)). See also, N.J.S.A. 48:1-1.

According to PSE&G, the Board made similar conclusions in In re JCP&L Request for Authorization to Implement a Conditioned Power Service Program and for Approval and Acceptance of Tariff Revisions Related Thereto, 1993 WL561957 (Order dated October 19, 1993). In that same order, the Board also drew a distinction between regulated services that are directly related to the provision of safe, adequate and proper utility service, and competitive services that have a "sufficient nexus" to the safety and reliability of utility businesses to justify a public utility competitive service offering:

Although the proposed programs offer services and equipment which are similar to services and equipment available in the non-regulated marketplace, the Board believes that there is sufficient nexus between power conditioning and the provision of safe, adequate and proper service to warrant Board approval of the CEP and PDP programs as optional tariffed utility services. It is clear from the record in this matter that, in addition to the general requirement that all customers have access to a safe, adequate and proper level of service from JCP&L's system, many individual customers now have a need for an even higher quality of service, because much of today's modern sophisticated electronic

equipment requires such a high quality of power service. In designating these services as optional tariffed utility services, the Board can assure that these services are made available to all of JCP&L's customers who desire such service from the utility, under standards and conditions prescribed by this Board. Customers will, of course, be free not to avail themselves of these services, or to obtain similar services from other vendors.

The Board recognizes and emphasizes that these proposed services will be offered on a voluntary and individual basis, the costs of providing these services must be borne entirely by those customers desiring this higher quality service. In order to ensure that no cross-subsidization by JCP&L's general ratepayer base occurs, we FIND that strict accounting and monitoring oversight is essential.

[id., at 7]

PSE&G argued that its proposed new services satisfy the relevant provisions of EDECA because they are related to safety and reliability of utility businesses, have been or are substantially similar to competitive services that have been provided by it or any other electric or gas public utility in the past, regardless of relationship to safety and reliability, and/or are provided to non-residential customers using utility employees and assets, and not prohibited by law. PSE&G Initial Brief at 14, 29, 46,

PSE&G maintained that EDECA quite clearly permits public utilities to provide competitive "[s]ervices related to safety and reliability of utility businesses" to all of its customers without limitation. N.J.S.A. 48:3-58(b). It further suggested that the use of "utility businesses" in that specific provision is not restricted to gas or electric utilities. PSE&G cited EDECA's provisions permitting gas public utilities to continue the following competitive services:

- (1) Metering, billing and related administrative services that are deemed competitive by the board...;
- (2) Services related to safety and reliability of utility businesses;
- (3) Competitive services that have been approved by any electric or gas public utility since prior to January 1, 1993 or that have been approved by the board prior to the effective date of EDECA;
- (4) Service that are substantially similar to competitive services that are permitted under paragraph (3); and
- (5) Competitive services to non-residential customers using utility employees and assets.

N.J.S.A. 48:3-58b.4.

PSE&G asserted that once a new service offering fits within one or more of the five EDECA categories specified in N.J.S.A. 48:3-58b, the Board is statutorily directed to conduct a factual analysis limited to assuring that (1) such services do not adversely impact the ability of the utility to provide safe, adequate and proper service; (2) competitive service costs are fully allocated; (3) regulated rates do not subsidize competitive services or its expenses; and (4) the competitive service offerings are offered in a non-discriminatory manner to customers. N.J.S.A. 48:3-58d., f. and j. PSE&G Initial Brief at 23.

With respect to the nexus between safety and competitive services, PSE&G argued that EDECA does not require that new competitive service offerings by public utilities "improve" the safety and reliability of "its public utility business." PSE&G argued that N.J.S.A. 48:3-58b (2) states that a "gas public utility may provide... [s]ervices related to safety and reliability of utility businesses." PSE&G asserted that its proposed services are related to the safety and reliability of its business. PSE&G argued that in many instances it is asked to consult with respect to the proper digging and maintenance of trenches associated with gas, electric, water and sewer distribution services because in some instances, these trenches are shared. Moreover, PSE&G claimed that when its technicians are in the home, the issue is not always with the appliance but with electrical wiring or plumbing supplying the equipment. Currently, PSE&G is forced to leave the customer to contact an outside contractor to make the repairs without any opportunity to provide the customer with options, leaving the customer unhappy and unsatisfied. Thus, PSE&G believes that the Home Protection Service Contracts it proposes are similar to and complement its existing appliance service offerings, and provide full service protection to ensure safe, proper, and efficient use of the home appliances and ensure overall safety. PSE&G Initial Brief at 32.

PSE&G also argued that the expansion of a workforce, including outside contractors, to perform competitive services will enhance its ability to react to severe weather events like Hurricane Sandy. In support of its proposal to provide residential electric, sewer, water line, and plumbing protection offerings, PSE&G also argued that electrical and plumbing service lines sometimes turn out to be the problem when it is responding to a customer's appliance issue, and that it is inefficient to then have to refer the customer to an outside plumber or electrician. PSE&G Reply Brief at 37-40

PSE&G reiterated that EDECA does not require that new competitive service offerings by public utilities "improve" the safety and reliability of "its public utility business." PSE&G argues that N.J.S.A. 48:3-58b (2) reflects that a "gas public utility may provide ... [s]ervices related to safety and reliability of utility businesses." PSE&G also pointed out that Rate Counsel acknowledges that there is no evidence in the case that would indicate that the new services offerings and products would impact PSE&G's ability to provide safe, adequate and reliable natural gas distribution service. PSE&G Reply Brief at 2-3.

Rate Counsel

In its initial brief, Rate Counsel asserts that EDECA limits the ability of a public utility to expand its competitive services to new services that fit within one of five limited categories. Rate Counsel states that under EDECA the Board may grant approval of competitive services within a regulated gas utility only if they satisfy the conditions in N.J.S.A. 48:3-58. Rate Counsel Brief at 10-12.

Additionally, the rules define and further limit the qualifying products and services:

"Existing products and/or services" means those products and/or services, which an electric and/or gas public utility was offering prior to January 1, 1993, that have been approved by the Board prior to February 9, 1999, or an electric and/or gas public utility is offering on May 19, 2008.

[N.J.A.C. 14:4-3.2]¹

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services.

[N.J.A.C. 14:4-3.2]:

Rate Counsel argued that among the new services proposed by PSE&G, only the WorryFree Contracts for pool heaters & gas grills fit within any of the categories set forth in EDECA for approval of new competitive services. As such, Rate Counsel does not oppose the proposed new contracts for pool heaters and gas grills because the Company performed repairs of these appliances prior to the passage of EDECA. It argues that the other proposed offerings should be denied. Rate Counsel contended that these other offerings fail to satisfy the requirements of EDECA. Rate Counsel Brief at 14-15

First, Rate Counsel contends that the Board has determined in In re Public Service Electric & Gas Co., Docket Nos. GR91101574J & ER9111169J (Order dated January 27, 1994), that sixteen services offered by the Company are "services related to safety and reliability of utility business" and must be offered free of charge. Rate Counsel interprets this statutory language to apply to services related to the safety and reliability of the infrastructure owned by PSE&G. Rate Counsel argues that this statute cannot be broadened, as PSE&G is seeking to do, to encompass new competitive products such as water and sewer services (that are not even governed by EDECA) which are related only to safety inside the customer's home. According to Rate Counsel, the Company's position would contradict the Legislature's intent inherent in EDECA.

Second, Rate Counsel argues that Category 4 is the only category of the EDECA requirements that is relevant to the Company's instant petition. This category permits new competitive services that are "substantially similar" to those offered by any electric or gas public approved by the Board prior to the effective date of EDECA of February 2, 1999. Rate Counsel notes that presently, PSE&G offers "WorryFree" service contracts for replacement parts of various household appliances (e.g. clothes dryers, wall ovens, etc.), appliance repairs, and central heating, air conditioning, and water heater tune-ups. In Rate Counsel's view, the above Category 4 directive allows expansion only to services that are "substantially similar" and thus, connotes a higher threshold of similarity to existing competitive product offerings. As such, Rate Counsel posits that the replacement service contracts on pool heaters and natural gas grills are

¹ While still cited in the regulations, the Response to Comment document agreed with commentators who remarked that a reference to competitive offerings as of May 19, 2008, was inconsistent with EDECA:

The effective date of the EDECA was February 9, 1999. EDECA does not mention a May 19, 2008 date; therefore, the Board agrees with the commenter and will propose the deletion of the language in companion proposal.

[44 N.J.R. 1534(a)]

This section was recently amended to remove the reference.

the only proposed new services in this petition that merit approval pursuant to EDECA. Rate Counsel disagrees that the Worry-Free service contracts should be expanded to mini-splits and heat pumps. It argues that the New Jersey Natural Gas Company and Elizabethtown Gas Company central air conditioning repair and parts replacement services argument upon which PSE&G's "similarity" is premised, were approved after the effective date of EDECA. Rate Counsel Initial Brief at 17-21.

Rate Counsel states that the water line, and plumbing protection plans do not even involve gas or electric service, and are unrelated to PSE&G's core business of transmission and distribution of electric and gas service and fail to remotely meet the "substantially similar" threshold. Rate Counsel urges the Board to not allow the Company to expose ratepayers to increased financial risk as a venture into water and sewer services, in which the Company lacks expertise, is liable to do. Rate Counsel argues that PSE&G intends to contract outside licensed subcontractors to perform these services, as opposed to using the Company's unionized workforce; thus, ratepayers will not benefit from these offerings during major storms as the Company claims. Rate Counsel Brief at 18-20

In addition, Rate Counsel argued that PSE&G's role as the largest gas and electric utility in New Jersey drives the success of its appliance service business. The service calls from its regulated customers provide PSE&G with privileged opportunities to market its appliance service business, and its expansion would further advantage the Company relative to its competitors in this market. Rate Counsel avers that EDECA was intended to "de-regulate the State's electric and natural gas utilities in order to "[i]ower the current high cost of energy" and "[p]lace greater reliance on competitive markets." N.J.S.A. 48:3-50(a)(1) and (a)(2). Rate Counsel Brief at 27. In Rate Counsel's view, the expansion of PSE&G's competitive service work will not encourage competition in the market for appliance services.

As neither the proposed residential electric, sewer, water line, and plumbing systems protection services nor the heat pumps or mini split systems which PSE&G has not previously offered are remotely related to any grandfathered product or service, Rate Counsel urges the Board to deny the Company's request to implement heat pumps and mini-splits as the offerings fail to satisfy the requirement of similarity to grandfathered services under EDECA. Id. at 20-27.

Regarding the net margins from the proposed new products and/or services, Rate Counsel observes that historically, margins earned from PSE&G's ASB are reviewed only when base rates are set in the course of a base rate case proceeding. Such margins are accounted for as a contribution to "above-the-line" utility income in the determination of the Company's revenue requirement. In between base rate cases, the growth in incremental margin revenues from PSE&G's ASB accrue solely to the benefit of PSE&G's shareholders. Rate Counsel notes that at present, between base rate cases, there is no rate mechanism to return such incremental margin revenues to ratepayers thus denying the Company's ratepayers any benefits from the incremental margin revenues. Rate Counsel identifies PSE&G's projected first year margin revenues from its proposed products totaling \$627,000, and increasing to \$1.857 million in year three after implementation, as significant contributions to the Company's bottom line under the existing scheme. Given that PSE&G claims that the incremental margins from its ASB operate to mitigate the need for a base rate case, it is reasonable to infer that incremental margins between base rate cases would operate to even further extend the time between base rate cases, thereby forestalling the transfer of incremental margin revenues to ratepayers. As such, Rate Counsel recommends that the Board implement a margin sharing mechanism if the Company is permitted to expand its ASB offerings, and that the net margins from new service offerings initiated subsequent to PSE&G's last base rate case be credited to ratepayers on a

going forward basis through a clause-type mechanism. Id. at 28-33. The Company should also be required to monitor its fully allocated costs more frequently as recommended by Overland Consulting in its audit report. Id. at 33-35.

Board Staff

In its brief, Staff stated that it is not opposed to PSE&G's request to expand its repair, replacement parts contract service to include pool heaters and natural gas grills. PSE&G should be permitted to include these appliances since PSE&G has already received approval to provide repair services to pool heaters and natural gas grills through prior Board orders. Staff Brief at 11. According to N.J.S.A. 48:3-58(b) (3), a gas public utility may provide a competitive service if any electric public utility or gas public utility offered that service prior to January 1, 1993. PSE&G has been providing appliance repair service for pool heaters and gas grills since 1960 (RA-1 and RA-4). Given that the Company has received prior approval to service gas grills and pool heaters pursuant to N.J.S.A. 48:3-58(b) (4), Staff can find no basis why PSE&G should not be allowed to extend its appliance repair and replacement contracts to include natural gas grills and pool heaters. Staff Brief at 11.

In addition, Staff is not opposed to the Company's proposal to expand its repair and replacement parts service contracts to include mini splits and heat pumps. Board Staff agrees with the Company that the repair and replacement of parts and full replacement relating to mini-splits and heat pumps is simply a natural progression of the existing competitive offerings. Staff Initial Brief at 12-15. Staff asserts that the service is substantially similar to existing services provided by PSE&G that received prior Board approvals. Id. at 12-14.

According to Staff, PSE&G presently provides the installation, removal and disposal of central heaters and/or central air conditioners in a variety of sizes to customers who have central air conditioners and heating as well as customers interested in upgrading to central air conditioning and heating (P-4, lines 7-9) pursuant to the Board's Order dated March 22, 2002 in Docket No. E098030146. This Order granted PSE&G approval for a Central Heater Replacement Program and a Central Air Conditioning Replacement Program. The Company's request to add mini-splits and heat pumps to repair and replacement of appliance parts services and full replacement services is, in Staff's view, a natural extension of the existing program as substantial similarities exist between them in the form of materials, components, operation and function as testified to by PSE&G's witness, Mr. Cardenas, P-4, page 4, line 17 to page 5, line 9. As Mr. Cardenas clarified under cross examination, PSE&G does not envision a new construction market for these new services. PSE&G intends to provide these services to customers who already have these appliances and to those customers expanding their existing homes where duct work does not exist (T-35, lines 8-16) (RA-1, page 4, lines 7 -10). Staff Brief at 14.

Staff recommends that these services be approved on the condition that PSE&G limits its expansion of its HVAC Replacement to existing residential customers' abodes and instances where there is an addition to a residential customer's home that lacks duct work in the extension. This is consistent with the Company's existing HVAC replacement program. (T-36, line 5 to page 41, line 24). Staff maintains that PSE&G agreed at the hearing that such a limitation was entirely consistent with its petition where self-contained ductless HVAC systems are needed in order to service, for example, unheated areas of an existing home undergoing remodeling. Ibid.

With respect to PSE&G's proposal to offer residential protection services, Staff recommends the rejection of PSE&G's request to offer residential protection services, namely, home electric system protection, home sewer line protection, home water line protection and home plumbing system protection services. Staff argues that the primary element of EDECA germane to the Board's approval of these services is whether they are determined by the Board to be substantially similar to competitive services that have been offered by any electric or gas public utility prior to January 1, 1993 or approved by the Board to be offered by an electric or gas public utility prior to EDECA. Staff concurs with Rate Counsel's witness, Mr. Peterson, that these services are not even remotely related, let alone substantially similar, to any product or service permitted under EDECA. Staff notes that the Company does not currently provide these services (T-17, lines 17 to 20), and that no regulated gas company in New Jersey currently offers these competitive services within the utility (T-22, lines 8-22). Staff argues that the Company's contention that a home's electric wiring, water line, sewer line, and plumbing are all part of an integrated utility lacks merit as the Company has failed to show how this supposed interconnectedness of home utilities is consistent with the prescriptions of EDECA. The Company's contention that the benefits to customers of PSE&G providing electric wiring, water line, sewer line and plumbing services is that its customers of existing appliance service offerings would have a convenient access to one-stop shopping for all these services (T-122), is belied by the fact that the Company plans to utilize outside contractors to provide these new services (T-122 to T-124). In Staff's view, the touted one-stop shopping as envisioned by the Company provides no meaningful advantage to such a customer who can independently contract an independent licensed technician to do the job. Staff Brief at 18

For the proposed competitive service offerings which Staff supports, Staff is convinced that PSE&G has taken the appropriate measures to ensure that the provision of non-competitive services to its customers will not be adversely affected by the competitive programs. Pursuant to N.J.S.A. 48:3-58(d), the Board must determine whether the proposed competitive services will adversely impact the ability of the gas public utility to offer its non-competitive services to customers in a safe, adequate, and proper manner. For the repair and replacement parts contracts for mini splits, heat pumps, pool heaters and natural gas grills, and the replacement services, labor resources are jointly deployed by the utility to provide competitive and non-competitive services. PSE&G proposes to utilize its unionized workers. Staff believes that PSE&G has sufficiently demonstrated that it has taken measures to ensure that the provision of non-competitive services to the Company's customers will be given a higher priority and not be adversely affected by the provision of its proposed competitive programs. PSE&G provided an order execution schedule which prioritizes its dispatch categories into seven categories. Emergency calls receive the highest priority. These calls include such order execution types as gas odors, fires/explosions, customer made ill, carbon monoxide, and other hazardous situations. Other non-competitive orders executions also receive priority over competitive service calls such as pilot out, industrial poor supply or low pressure, no heat and restoration for non-payment to name a few. In fact, when asked about how PSE&G technicians will handle a gas odor call in the middle of a central AC replacement, PSE&G explained how the replacement work would stop and the technician would respond to the gas odor call. In addition, Rate Counsel found no evidence at this time that suggest any of the proposed new offerings will adversely impact the Company's ability to provide safe, adequate and reliable natural gas distribution services to New Jersey customers. On this basis, Staff recommends that the Board find that the Company's proposal to offer these new competitive services will not adversely impact its ability to provide safe, adequate, and proper non-competitive services. Staff Brief at 20-21.

While Staff is convinced that the prices that PSE&G plans to charge for the proposed competitive services are not less than their fully allocated cost and thus pass the test for cross subsidization, Staff agrees with Rate Counsel that these costs should be reviewed more frequently between rate cases. Rate Counsel has raised concerns about how PSE&G's labor costs rose significantly in a relatively short period of time (about 21% in two years), and that PSE&G may not be monitoring its fully allocated labor costs frequently enough (RA-1, 17). Staff shares this concern and, thus, supports Rate Counsel's suggestion that Overland Consulting's recommendation in the Audit Report dated January 2012 in BPU Docket No. EA09040305 be adopted by the Board. Specifically, Rate Counsel notes that Overland recommended that PSE&G monitor its fully allocated cost per hour on a more frequent basis (e.g. monthly or quarterly) to ensure that the floor price included in the Company's tariff for appliance services covers the fully allocated cost of its appliance services, thereby ensuring continual compliance with EDECA standards. Staff Brief at 22-23.

Staff also recommends that the Board order that the net revenues accruing from these new appliance services be credited to ratepayers in a more timely manner. As already outlined above, the net revenues generated by PSE&G from new appliance service products are currently treated above the line and credited to the Company's gas distribution revenue requirements, and thus, to its ratepayers in the succeeding base rate proceeding. N.J.A.C. 14:4-3. (r) (4). However, the Company retains all revenues from appliance service offerings commenced between base rate cases. As Rate Counsel has asserted, PSE&G earns substantial net margins from competitive appliance services. Id. at 24.

As proposed by the Company, the net margins earned from the new appliance service offerings will also not be credited to the Company's utility revenue requirement until the next base rate proceeding. Thus, the increase in net margins will, in the interim, inure solely to the benefit of PSE&G and its stockholders (RA-1, page 13, line 10 to page 15, line 2). Staff notes that the Board has the discretion to determine how the net revenues should be credited to ratepayers.

If the Company's request or a portion thereof is approved, Staff agrees with Rate Counsel's position that there should be some form of sharing between the Company and its ratepayers in between base rate cases so that gas utility service ratepayers are compensated on a more timely basis for the embedded costs that are utilized by the competitive business side of PSE&G. Staff presented several options for a method of implementing this sharing. Staff Brief at 27.

ALJ Cookson's Initial Decision

In her Initial Decision ("ID") dated April 5, 2013, ALJ Cookson found that neither PSE&G nor any other gas or electric utility in the State of New Jersey offered home water line, plumbing or sewer protection prior to 1993, and that the provision of home water line, plumbing or sewer protection does not relate to the safety and reliability of PSE&G's gas or electric utility service. ID at 6. She also found that the provision of home water line, plumbing or sewer protection relates at best to the convenience and marketing advantage of one-stop home protection shopping for PSE&G or other customers. ID at 7. The ALJ also noted that for the provision of home water line, plumbing or sewer protection contract services, PSE&G would be utilizing the services of independent contractors and/or independent homeowner protection service providers rather than utility employees and assets. As such, based upon the fact that it will be outsourcing most of these new service offerings, PSE&G will not have expanded the size of its labor force available to undertake emergency utility repairs in the event of future natural or manmade disasters. Ibid. Also, PSE&G's arguments that these services are related to the

safety and reliability of utility businesses are not supported by data, facts or specifics, and rely upon a conclusory presentation on how the Board should accept *a priori* that water, sewer and electrical lines are impacted by similar events. ID at 11.

Similarly, the ALJ rejected the application with respect to the home electrical protection plan. She reasoned that while the Board has discussed that a gas utility may provide certain competitive services within its regulated entity structure without requiring that it create an unregulated subsidiary, In re Petition of Jersey Central Power and Light Company for Authorization to Implement a Conditioned Power Service Program and for Approval and Acceptance of Tariff Revisions Related Thereto, BRC Order of Approval Docket No. ET92040380 (October 19, 1993), no case has been presented in which the Board approved pre-EDECA an optional home electrical protection contract. ID at 12. ALJ Cookson concluded that the approval that JCP&L received in 1993 to offer a consumer electronics surge protection program or general power disturbance protection program was neither the same as nor substantially similar to what PSE&G is requesting in this proceeding. She also concluded that PSE&G has not supported its petition that the proposed service is substantially similar to the protections it or any other utility offered before EDECA, or that it has a sufficient nexus to the safety and reliability of regulated utility services. ID at 12-13.

On the other hand, ALJ Cookson found that the provision of residential service contracts and repair replacement parts service contracts for heat pumps, pool heaters and gas grills is substantially similar to competitive service contracts for other home appliances currently offered by PSE&G with Board approval. ID at 7. The ALJ also agreed that the installation of mini-split HVAC systems is substantially similar to the other types of HVAC installations already performed by PSE&G on a competitive basis. Ibid.

Regarding the offering of repairs and replacement parts service contracts to heat pumps, pool heaters, mini-splits, and gas grills, and replacement contracts for heat pumps and mini-splits ALJ Cookson agreed with Staff and PSE&G that these services are consistent with prior offerings and EDECA. She rejected Rate Counsel's argument that heat pumps and mini-splits are outside of EDECA and unauthorized but that gas grills, pool heaters and larger (than mini-split) air conditioning systems are authorized by EDECA. ID at 13. According to ALJ Cookson, to accept Rate Counsel's position "is to vault form over substance." Ibid. She cited the Board's ruling in its 2002 approval of PSE&G competitive offerings namely:

The Board's review indicates that PSE&G's proposed new Central Heater Replacement and Central Air Conditioning Replacement Programs are comparable to service appliance replacement parts services provided by New Jersey Natural Gas Company for the repair of central air conditioning units and Elizabethtown Gas Company for the repair of house heaters prior to the effective date of the Act. In addition, the proposed new programs appear to be comparable to the replacement of Central Heater and Central Air Conditioning services offered by other non-utility vendors. PSE&G already offers a replacement parts service program for water heaters, which was approved prior to EDECA on November 23, 1998, in Docket No. ET97070476. PSE&G has also been providing appliance repair on Central House Heating and Electric Central Air Conditioners prior to EDECA, pursuant to a Board Order dated April 14, 1997, in Docket No. EC96070517. Therefore, the Board is satisfied that these services are

substantially similar to the two Proposed Competitive Programs and that approval of PSE&G's request would be permissible under N.J.S.A. 48:3-58(b)(4).

In re Public Service Electric and Gas Co. for Approval to Implement Central Heater and Central Air Conditioning Replacement Programs ("PSE&G HVAC Order"), Docket No. EO98030146, 2002 N.J. PUC LEXIS 103, 19-20 (March 22, 2002)

ID at 13-14.

ALJ Cookson concluded that these new service offerings will not interfere with PSE&G's ability to provide safe, adequate and proper utility service to customers because PSE&G will continue to prioritize utility repair and emergency work orders over these competitive services and that additional competitive work orders that may result from these new repair and maintenance offerings has the added benefit of contributing to fuller employment of utility personnel. ID at 14.

Regarding the issue of the proper accounting for the profit margin on these competitive services, the ALJ is not swayed by Rate Counsel's and Staff's arguments to accelerate the recognition of the revenues from these services between rate cases. The ALJ found that the Board historically has not required PSE&G to implement attribution of competitive service net revenues to ratepayers prior to the next filed base rate case. She concluded that PSE&G's proposal for accounting for these services is consistent with the manner that the Board has historically mandated, that is, to treat all net revenues from these competitive services above-the-line to the benefit of ratepayers. Ibid. The ALJ further concluded that she has no authority to require a new methodology of recognizing these revenues prior to a full base rate case, and that Rate Counsel is aware of its ability to place its request for a revised revenue recognition scheme before the Board citing In the Matter of the Petition of Rate Counsel Requesting a Board Order Directing Jersey Central Power and Light Company to File a Base Rate Case Petition and Establishing a Test Year of 2010, BPU Dkt. No. EO11090528, 2012 N.J. PUC LEXIS 193 (July 31, 2012.) ID at 15. She further stated that the Board previously rejected Rate Counsel's proposal in prior competitive service petitions. Ibid.

The ALJ also agreed that Staff and PSE&G have provided satisfactory evidence that the pricing of these new competitive offerings will be the fully allocated cost of such, and that ratepayers will not be subsidizing a below-market competitive service. Ibid.

Finally, on the issue of adopting the recommendations of a recent audit of PSE&G's competitive service offerings requiring PSE&G to more frequently monitor its floor prices and hourly labor rates, the ALJ agreed with the Company and concluded that this issue had not been transmitted to the OAL for determination in this proceeding. ID at 16.

EXCEPTIONS TO THE INITIAL DECISION

PSE&G' EXCEPTIONS

PSE&G in its Exceptions and Reply Exceptions to the Initial Decision urges the Board to affirm the decision without modification with the exception of the ALJ's conclusion that PSE&G's home electric protection offering is not substantially similar to JCP&L'S 1993 offering or PSE&G's own competitive service offerings, including gas piping repairs.

The Company argues that with respect to home electric protection, PSE&G sufficiently supported its position that its home electric service protection offering is the same as or "substantially similar" to a competitive service offering that JCP&L was authorized by the Board to offer in October 1993 – prior to the passage of EDECA. See In the Matter of the Petition of Jersey Central Power and Light Company for Authorization to Implement a Conditioned Power Service Program and for Approval and Acceptance of Tariff Revisions Related Thereto, 1993 Docket No. ET92040380 (Order dated October 19, 1993) (hereinafter "Jersey Central Order"). As discussed at length in the Company's filing and throughout this proceeding, and as PSE&G reiterated in its testimony in the proceedings and its arguments in its briefs, the proposed home electric system protection offering which contemplates inside electric line protection that covers repairs to outlets, switches, fuses, breakers and inside wiring is intended to enhance the customer's experience with the safety and reliability of electric distribution not only to, but within, the home. Similarly, the Jersey Central Order states that "various services and equipment to assist customers in protecting sensitive electronic equipment from power disturbances". PSE&G Exceptions at 6. PSE&G argues that the Board recognized the increased use of sensitive electronic equipment and appliances within the home and the fact that these services were not covered by existing rates, fares or charges previously approved by the Board. Jersey Central Order, supra, at 1-2.

PSE&G argues that its proposed offer accomplishes the same objectives sought by JCP&L two decades ago – namely, a competitive offering to enhance reliability and better provide for the uninterrupted supply of power to appliances within the home. The Company points to its witness, Mr. Cardenas', explanation that with respect to electric work within the home, PSE&G not only performs reconnections and disconnections but the appliances it services under existing approvals are all fed through the existing home electric wiring. Therefore, the Company claims that home electric protection constitutes a logical extension to existing appliance service offerings. Additionally, the Board long ago confirmed PSE&G's right to continue offering as a competitive service in the home, temporary or minor permanent repairs to customer gas piping. The Company argues that it would be completely arbitrary for PSE&G to be permitted to competitively offer to repair a minor customer gas pipe leak, but be precluded from repairing an electric wire hit by a nail that is preventing a dishwasher, particularly one that PSE&G already has a service contract on, from working. PSE&G Exceptions at 6-8. On this basis the Company requests that the Board approve its request to offer a home electric protection competitive service.

Regarding the issue of the rate treatment mechanism for net revenues from competitive services, PSE&G in its Reply to Exceptions reiterates its support for the ALJ's rejection of recommendations to alter the existing net revenue sharing scheme. PSE&G argues that although the agency has the ability to change its present policy with respect to the treatment of competitive service revenues, the burden rests with the agency to state in clear and sufficient detail the nature of its rejection and modification, the reasons for it, the specific evidence at hearing and the interpretation of law upon which it is based and the precise changes that result or disposition caused by the rejection or modification. Regarding Staff's proposed net revenue sharing proposal, PSE&G argues that the suggested mechanism was not developed in the record. PSE&G Reply to Exceptions at 3-5.

PSE&G rejects Rate Counsel's arguments taking exception to ALJ Cookson's approval of the Repairs and Replacement Parts Service contracts for heat pumps and mini-splits, and replacements for heat pumps and mini-splits programs. The Company reiterates its prior arguments that it currently services heating and cooling systems larger than mini-splits and that

with this filing, it merely seeks to extend its present heating and cooling offerings to install new mini-splits and heat pumps for customers who desire the service and offer service contracts on mini-splits and heat pumps as well. It claims that Rate Counsel has provided absolutely no support for the proposition that mini-splits and heat pumps are not "substantially similar" to the heating and cooling offerings PSE&G already provides. PSE&G Reply to Exceptions at 5-9.

PSE&G also reiterated its support for the ALJ's rejection of any suggestion that the recommendations contained in the recently concluded affiliate transaction and management audit regarding more frequent updates of its hourly labor rates should be adopted in this proceeding. PSE&G Reply to Exceptions at 9-11.

RATE COUNSEL'S EXCEPTIONS

Rate Counsel takes exception to the ALJ's rejection of Rate Counsel's argument that net revenues from any competitive services be credited to ratepayers in a timely manner. Rate Counsel opines that the ALJ erred in concluding that Rate Counsel must request a base rate case in order to properly credit ratepayers with the net margins from these new appliance services. Rate Counsel argues that it is not seeking to change existing base rates but rather a way for ratepayers to be credited with new, incremental net margins in a more timely fashion, which is fully within the Board's discretion to order absent a base rate case. Rate Counsel Exceptions at 6-7.

Rate Counsel argues that PSE&G's existing base rates only reflect net margins from competitive services that PSE&G offered at the time of its last base rate case in 2010. Since that time, PSE&G's Appliance Service Business has grown. Three new Appliance Service Business products were added in 2011: (1) Premier Coverage Gas Boiler Contracts; (2) Tankless Water Heater Contracts; and (3) Elite Range, Wall Oven, Cooktop, Refrigeration and Dishwasher Contracts. The new services proposed in the present case are also incremental to the services offered at the time of the last base rate case. These are not the product lines that were established in the last rate case. These are new products calling for special treatment. Rate Counsel opines that while EDECA provides specific guidance as to how margin revenues from competitive services provided by electric public utilities or their related competitive service business units should be returned to ratepayers, the relevant EDECA statute addressing gas competitive services is silent with respect to a mechanism to return margins to ratepayers. See N.J.S.A. 48:3-55, N.J.S.A. 48:3-58. The pertinent statute and regulations do not prohibit the concurrent return of net margins to gas ratepayers, and it is within the Board's discretion to order PSE&G to do so. The Board also has the discretion to determine how the revenues should be credited to ratepayers. Rate Counsel Exceptions at 7-8.

Rate Counsel asserts that the Board has options for expeditiously crediting such net margins to ratepayers. Rate Counsel suggests that the Board could initiate a Phase II proceeding for the purpose of determining a mechanism or other method for returning the net margins. Alternatively, the Board could direct PSE&G to book as a regulatory liability the incremental net margins from new offerings initiated since PSE&G's last base rate case on a going forward basis. Such net margins can then be credited to ratepayers during PSE&G's next base rate case. Ibid.

In addition, Rate Counsel asserts that the Initial Decision ignores the applicable portions of EDECA in approving PSE&G'S proposals to offer worry-free contracts and "replacement contracts" for heat pumps and mini-splits. EDECA requires a gas utility to first proffer that a new competitive service be "substantially similar" to competitive services that were offered by any

gas or electric utility prior to the effective date of EDECA. N.J.S.A. 48:3-58(b)(4). The Initial Decision approves PSE&G's proposals to offer WorryFree Contracts and "Replacement Contracts" for heat pumps and mini-splits based on a finding that these proposals are consistent with prior offerings and EDECA, even though throughout this proceeding, PSE&G never presented any evidence that any gas or electric utility offered competitive services remotely related to these proposals, much less "substantially similar," prior to the effective date of EDECA. Rate Counsel maintains that its position is wholly consistent with Board precedent on this issue. Rate Counsel Exceptions at 8-10.

According to Rate Counsel, PSE&G should not be allowed to expand its competitive offerings to new appliances that were never part of any gas or electric utility's pre-EDECA competitive services business, and were not offered by any gas or electric utility in the State. It thus recommends to limit approval of PSE&G's proposals to gas grills and pool heaters, and adopts the Board's reasoning in the PSE&G HVAC Order previously discussed. Rate Counsel Exceptions at 9-10.

In its exceptions, Rate Counsel also requests that PSE&G's proposals to perform new installations of heat pumps and mini-splits be denied. PSE&G stated in testimony and at the evidentiary hearing that it is seeking to perform new installations of heat pumps and mini-splits. Rate Counsel disputes PSE&G's arguments that its proposal to perform these new installations is "substantially similar" to its current offering of new installations of central air conditioners and heaters because PSE&G revealed at the evidentiary hearing that even though it currently offers new installations of central air conditioners and heaters, PSE&G never petitioned the Board for approval of this service. Therefore, PSE&G is currently offering this service without Board approval. Rate Counsel Exceptions at 11-12.

Rate Counsel claims that the PSE&G HVAC Order approving PSE&G's central air conditioner replacement program shows the Board only approved central air conditioner replacement and heater replacement, not new installations. Rate Counsel cites to the Board's order approving PSE&G's HVAC Replacement Service. In that order the Board stated:

PSE&G is proposing to offer both a turn-key Central Heater Replacement Program and a Central Air Conditioning Replacement Program by selling and installing a range of central heaters and central air conditioners in a variety of sizes and energy efficiencies within its service territory and statewide and intends to utilize its gas distribution employee workforce for the installation of central heating and central air conditioning units, plus removal and disposal of the replaced units.

Rate Counsel argues that the HVAC Order is limited to replacement of existing central air conditioners and central heating units, and that PSE&G never subsequently petitioned the Board for approval to offer new installations of these units. As such, PSE&G does not have the Board's approval to install new central air conditioners or new heating units. Therefore, PSE&G cannot argue that new mini-split and heat pump installations should be allowed because PSE&G is already installing new central air conditioners. Rate Counsel Exceptions at 11-12.

Rate Counsel also opines that the ALJ erred in authorizing PSE&G to perform repairs of heat pumps and mini-splits, since PSE&G never petitioned the Board for such approval in this matter. Rate Counsel maintains that while the ID states that "the offering of repairs and replacement parts service contracts to heat pumps, pool heaters, mini-splits, and gas grills, and replacement contracts for heat pumps and mini-splits are consistent with prior offerings and EDECA,"

PSE&G never petitioned the Board for approval to expand its appliance repair services. PSE&G's petition in this matter sought approval of replacement parts service contracts (WorryFree) for these appliances. Rate Counsel claims that PSE&G does not currently offer repair services for mini-splits or heat pumps. Accordingly, the Initial Decision should be modified to address this open issue. Rate Counsel urges the Board to clearly specify in its order in this matter that it is not sanctioning any new repair services for heat pumps or mini-splits. Rate Counsel Exceptions at 12-13.

Finally, Rate Counsel asserts that the ALJ erred in not requiring the Company to update its hourly labor rate on a more frequent basis. Presently, in accordance with Board regulations, PSE&G updates its hourly rate on a semi-annual basis. Rate Counsel reiterates its concern over a recent competitive services audit report that indicated there was a 21 percent increase in the previously established labor rate from March 6, 2008 to March 1, 2010.² The fact that PSE&G's labor costs rose significantly in a relatively short period of time (21 percent in two years) supports the reasonableness of the auditor's recommendation. Id. at 13-14.

Rate Counsel also notes that in addition to EDECA requiring that in order to approve a new competitive service, the Board has to find that the price charged for the service is no less than the fully allocated cost of providing the service. N.J.S.A. 48:3-58(d)(2), the Board has imposed an affirmative duty on public utilities to ensure that the prices of any competitive services equal or exceed the fully-allocated cost of providing such competitive services. Rate Counsel opines that the Initial Decision erroneously determined that the issue of any recommendations of a recent audit undertaken by Overland on PSE&G's competitive service offerings is not an issue that has been transmitted to the OAL for determination in this proceeding." In Rate Counsel's view, it is irrelevant that the concern over PSE&G's hourly labor rate was discovered in a separately docketed audit proceeding. Although the ALJ declined to make a determination on this issue, Rate Counsel argues that the Board is mandated by EDECA to ensure that PSE&G charges no less than the fully allocated cost of providing any and all competitive services. Rate Counsel therefore recommends that now that the Board is aware of this information, it should condition any approval in this case on more frequent monitoring and updating of the Company's hourly labor rate to ensure that ratepayers are not subsidizing the Company's competitive services. Id. at 13-14.

In its Reply to Exceptions, Rate Counsel challenged PSE&G's assertion that the ALJ found that there is no authority for a new methodology for recognizing additional revenues from new competitive services between rate cases. The ALJ deferred decision on this issue to the Board which clearly has the authority to rule on the issue and should. Rate Counsel Reply to Exceptions at 2-3.

Rate Counsel supported the ALJ's denial of PSE&G's proposed Home Electrical System Protection Contracts as not sufficiently similar to the JCP&L surge protection offering or to PSE&G's current gas piping offerings. Id. at 3-5. Rate Counsel maintains that PSE&G has failed to carry its burden of showing how this offering addresses issues of safety and reliability relating to PSE&G's provision of service, and any assertions were devoid of factual support. Id. at 6 -8.

² See RA-9, excerpt from the Overland Audit Report (January 2012), BPU Dkt No. EA09040305, Chapter 4 Recommendation 1, p. 4-2. The audit proceeding is pending before the Board.

DISCUSSION AND FINDINGS

In evaluating PSE&G's request for approval to expand its appliance service product offerings and/or other competitive services, the Board must review the record, balance the interests of the ratepayers and the Company's shareholders, and determine whether the proposed new competitive services are consistent with EDECA and relevant Board policies while still ensuring that the Company's obligation to provide its customers in this State with safe, adequate and proper utility regulated service at just and reasonable rates is not compromised. Moreover, the record must demonstrate that utility ratepayers will not subsidize the proposed competitive services, and that the utility will provide the proposed competitive services in a non-discriminatory manner.

PSE&G segregates its existing and proposed competitive service offerings into appliance offerings known as Appliance Repair and Maintenance Service ("APSO"), Worry-Free Replacement Parts Service Contracts, and Appliance Replacement Service for residential, small commercial and industrial appliances. These service offerings currently include such appliances as rooftop heaters and air conditioners, electric central air conditioners, central heating and water heaters, and residential pool heaters and gas grills, central house heating, water heater, electric central air conditioning, kitchen and laundry appliances, gas piping, gas fireplace, gas grills, pool heaters, rooftop heating, electric rooftop and central air conditioners. The Company has offered some of these services since 1903. Thus, PSE&G has had a long history of providing appliance services, and of having directly employed many of the technicians making these repairs and replacements.

By the Petition, the Company seeks to expand its residential Repair Replacement Parts Service Contracts to include heat pumps, pool heaters, ductless heating and cooling systems ("mini splits"), and natural gas grills; expand its existing full replacement program to include heat pumps and mini splits; and provide residential electric, sewer, water line, and plumbing protection offerings. As argued extensively by the Parties, the Board must review these proposed offerings in accord with the requirements in N.J.S.A. 48:3-58 and the Board's rules in N.J.A.C. 14:4-3.6.

After a careful review of the record in this proceeding, the Board observes that neither PSE&G nor any other gas or electric utility in the State of New Jersey offered home electric, water line, plumbing or sewer protection prior to 1993, and that these proposed contract offerings are dissimilar to prior gas and electric competitive offerings of PSE&G or any other gas or electric utility company in New Jersey. Moreover, the Board finds no merit in the Company's claim that the provision of home water line, plumbing or sewer protection relates to the safety and reliability of PSE&G's gas or electric utility service. PSE&G has not demonstrated that these Home Protection Services would improve the delivery of safe, adequate and proper utility regulated service. Nor has PSE&G demonstrated that its regulated delivery of electric service to the home has been damaging home appliances as in the case of JCP&L where it became necessary for customers to have surge protectors which the company was then authorized to provide. Moreover, the Board is not persuaded by PSE&G's argument that the reference to "safety and reliability of utility service" in N.J.S.A. 48:3-58 b(2) can be read so broadly that the Company can provide any service arguably related to the safety or reliability of any utility service provided by any utility, and not just those services related to the energy utilities. In fact it rarely is the case as discussed by the ALJ in the Initial Decision, that water and sewer lines share the same trench as the gas lines warranting the exercise of the Company's expertise in connection with problems on those service lines. Thus, the nexus between the safety and

reliability of the Company's utility service and the competitive services proposed herein, is a very weak link if there is any at all.

At most, PSE&G simply showed that one stop shopping with respect to the home protection plumbing and home protection electric services would be welcomed by some consumers since they would not need to find a contractor to perform work while the utility technicians were already in the home. Although one stop shopping may be convenient to customers, it is not one of the criteria identified in N.J.S.A. 48:3-58 and the Board's rules in N.J.A.C. 14:4-3.6 upon which the Board evaluates proposed competitive services. Home plumbing and electric protection services have not been services previously approved by the Board for other gas or electric utilities, and are not substantially similar to other services previously approved by the Board for energy utilities.

Accordingly, the Company's request to provide home water line, plumbing or sewer services, and home electric protection services is **HEREBY DENIED**. Thus, the Board **HEREBY ADOPTS** the ALJ's initial Decision with respect to the Home Protection Service Contracts.

Regarding the Company's request to provide residential service contracts, and repair and replacement parts service contracts for heat pumps, pool heaters and gas grills, the Board concurs with ALJ Cookson that these proposed service offerings are substantially similar to competitive service contracts for other home appliances offered by PSE&G and previously approved by the Board, and are consistent with EDECA. One criteria for approval under EDECA is that competitive services must be substantially similar to competitive services that are permitted under paragraph (3) which stated competitive services that have been approved by any electric or gas public utility since prior to January 1, 1993 or that have been approved by the board prior to the effective date of EDECA.; N.J.S.A. 48:3-58b.4. PSE&G already services pool heaters and gas grills. PSE&G has been providing APSO service on pool heaters and gas grills since around 1960.

As well, the Board agrees with the Initial Decision that the repair and installation of heat pumps and mini-split air conditioning systems is sufficiently similar to the other heat and ventilation repairs and installations performed by the Company on a competitive basis. As stated in the record, the parts for heat pumps and mini-spits are substantially similar, if not the same parts, that PSE&G currently repairs and replaces as part of its central heating and air conditioning services that PSE&G offers through approvals granted under prior Board orders. PSE&G has been providing APSO service on gas central house heating since 1903, and APSO and maintenance service on Electric Central Air Conditioners since 1996. In 2002, the Board approved the replacement services for Central Heaters and Central Air Conditioning Replacement, finding it met the statutory requirements.³ However, the Board agrees with Staff that the repair and replacement of mini-splits and heat pumps should be limited to existing structures, and not to new construction which, as indicated in the record, PSE&G confirmed was its intent when the Company proposed these services and offerings.

As required by N.J.S.A. 48:3-58 d(1), based on review of the record established in this proceeding, the Board **FINDS** that none of the proposed new service offerings that the Board approves in this Order, if implemented as proposed in the Petition, will interfere with PSE&G's ability to provide safe, adequate and reliable utility service to its customers as the Company has

³ I/M/O of the Petition of Public Service Electric and Gas Company For Approval to Implement Central Heating and Central Air Conditioning Replacement Programs, Docket No. EO98030146, Order dated March 22, 2002 at 6-10.

committed that it will continue to prioritize core regulated utility repair and emergency work orders over its competitive services. Thus, the Board **HEREBY ADOPTS** the ALJ's Initial Decision with respect to heat pumps and mini splits. Accordingly, the Board **HEREBY APPROVES** the Company's request to expand its competitive services for the repair and replacement parts service contracts to include such appliances as heat pumps, pool heaters, mini-splits and natural gas grills, and to expand its existing full replacement service offer contracts to include heat pumps and ductless mini splits. This approval for the installation of heat pumps and mini-splits is however **HEREBY LIMITED** to existing structures and not to new construction as intended and explained by the Company in the record.

The Board recognizes Rate Counsel's concern that the net revenues from these new services will not be attributed to the Company's revenue requirement and thus credited to customers until the next time PSE&G petitions for a full base rate case. The ALJ concluded that she did not have authority to require a new methodology for recognizing these revenues prior to a base rate case. ID at 15. The Board understands that these revenues are made possible by the utility embedded costs utilized by the competitive side of the company. However, the Board **AGREES** that this matter is more appropriately reviewed in the context of the Company's next base rate case proceeding to afford the parties a better opportunity for a more extensive and complete exploration of this issue. Accordingly, the Board **HEREBY DENIES** Rate Counsel's and Staff's request for alternative options for the treatment of revenues earned from competitive services between rate cases at this time, and therefore, **HEREBY ORDERS** that the current accounting treatment of the competitive services revenues be maintained pending the creation of a more complete record on this issue.

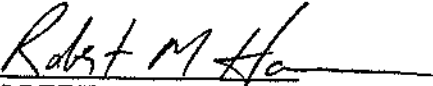
Staff and Rate Counsel urge the Board to require PSE&G to undertake more frequent monitoring of the floor price for competitive services by requiring PSE&G to more frequently update its fully allocated hourly labor rates to ensure that today's "fully allocated" costs do not become outdated. The ALJ declined to make a determination on this issue finding that it had not been transmitted to the OAL for determination in this proceeding. The Board agrees with Rate Counsel that EDECA mandates that the Company's charges should not be less than the fully allocated costs of providing any and all competitive services. As such, the Board **HEREBY ORDERS** PSE&G to monitor its fully allocated cost per hour on a more frequent monthly basis to ensure that its floor price covers the fully allocated cost of providing appliance services, thereby ensuring continual compliance with N.J.S.A. 48:3-58's standards. The Company is **FURTHER HEREBY ORDERED** to continue to file no later than 45 days following the close of each calendar year, an annual financial report and, no later than six months thereafter each year, a semi-annual financial report, providing information on the financial performance of each competitive product and/or service offering made by the public utility and/or its related competitive business segment, utilizing the information compiled pursuant to N.J.A.C. 14:4-3.6 (n). 14:4-3.6 (o) These reports should provide the income statements to the Board and its Staff, and provide a breakdown of actual costs and revenues with a copy to Rate Counsel.


PSE&G is also **HEREBY ORDERED** to submit tariffs sheets in compliance with this Board Order and N.J.A.C. 14:4-3.6 (t) within five business of the service of this Order.

The Company's competitive services remain subject to audit by the Board. This decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

DATED: 6/21/13


BOARD OF PUBLIC UTILITIES
BY:


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PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**I/M/O the Petition of Public Service
Electric and Gas Company for Approval
to Offer New Appliance Service Products
and/or Services in Accordance with
N.J.A.C. 14:4-3.6(a) and (g)
BPU Docket No. GO12030188**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**I/M/O THE PETITION OF PUBLIC
SERVICE ELECTRIC AND GAS COMPANY
FOR APPROVAL TO OFFER NEW
APPLIANCE SERVICE PRODUCTS
AND/OR SERVICES IN ACCORDANCE
WITH N.J.A.C. 14:4-3.6(a) AND (g).**

OAL DKT. NO. PUC 08129-12
AGENCY DKT. NO. GO12030188

Alexander C. Stern, Associate General Regulatory Counsel, for petitioner Public Service Electric & Gas Company (PSEG Services Corporation, attorneys)

David Wand and **Alex Moreau**, Deputy Attorneys General, for respondent Board of Public Utilities (Jeffrey S. Chiesa, Attorney General of New Jersey, attorneys)

Christine M. Juarez and **Kurt S. Lewandowski**, Assistant Deputy Rate Counsel for respondent Division of Rate Counsel (Stefanie A. Brand, Director, attorneys)

Record Closed: March 1, 2013

Decided: April 5, 2013

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF PROCEDURAL HISTORY

This matter was filed by Public Service Electric and Gas Company (PSE&G) seeking approval from the Board of Public Utilities (BPU) to expand its appliance

service products and/or other competitive services relating to, inter alia, home electrical systems, water line systems, plumbing and sewer systems, and ductless HVAC systems.

The BPU transmitted the contested case to the OAL where it was filed on June 18, 2012. It was assigned to the undersigned on June 29, 2012. During the initial case management conference held telephonically with the undersigned on July 23, 2012, all parties agreed that certain legal issues might be presented by motion and that evidentiary hearing dates would be scheduled in case they were needed. By Order entered on December 19, 2012, and incorporated by reference herein, I determined that the matter should proceed by way of plenary hearing without narrowing of the issues in contention by summary motion, which determination is incorporated herein. Accordingly, the hearing was held on January 9, 2013. Counsel were provided dates for simultaneous submission of post-hearing briefs and replies. The record closed on March 1, 2013, with the submission of the final replies by PSE&G and Rate Counsel. Staff opted not to file a responsive brief.

SUMMARY OF TESTIMONY AND EVIDENCE

The several aspects of the present petition are: (1) Home Electric System Protection, (2) Home Sewer Line Protection, (3) Home Water Line Protection, (4) Home Plumbing Systems Protection, (5) Installation of New Ductless (Mini-Split) HVAC Systems in Existing Homes, and (6) Residential Service Contracts for Heat Pumps, Pool Heaters and Gas Grills. The last proposed offering was not objected to by Rate Counsel or Board Staff. Board Staff also did not object to the Company's proposal to expand its competitive services to the mini-splits.

Jorge L. Cardenas is the Vice President of Gas Delivery at PSE&G. His pre-filed direct testimony outlined in broad terms a description of the current competitive services offered by PSE&G and the new ones proposed in this filing. He also laid out a general overview of the accounting practices associated with these competitive service offerings. Further, Cardenas stated that most of the new offerings would utilize the

company's existing unionized or prevailing wage workforce. The proposed home electric, sewer, water and plumbing protection plans would rely upon outside licensed plumbers and licensed electricians.

On cross-examination, Cardenas explained that the value of these additional vendors in PSE&G's database during an emergency or storm event might only be to enable it to leverage those relationships for its own emergency services or to recommend them to homeowners. The present proposal to expand competitive services would likely have little impact on the number of licensed trades in the State but might replace homeowner "weekend warriors."

With respect to PSE&G's proposed expansion into competitive offerings for home water line, sewer, and plumbing protection contracts, Cardenas had clarified, in his response to a Rate Counsel discovery request regarding the sharing of trenches between those types of services and electrical service, thusly:

Joint trenching is the use of a single trench for a common occupancy of utility services, typically electric, communications and gas. PSE&G routinely installs gas facilities that are installed in a trench that may also contain the cable, phone, or electric facilities. On rare occasion the joint trench may contain the water or sewer facility, located approximately 4 feet below. There are specific standards that require the separation of these facilities when sharing a common trench. Majority of joint trenches can typically be found in large residential housing developments. Public Service is also frequently involved in or consulted with respect to the proper digging and maintenance of trenches associated with gas, electric, water and sewer distribution services. This includes, but is not limited to, construction inspection processes as well as outreach education involving third-party excavators.

[Response to RCR-27 (RA-5) (emphasis added).]

PSE&G also presented the testimony of Stephen Swetz, Director of Corporate Rates and Revenue Requirements, on the issue of the establishment of the floor pricing for the proposed competitive offerings and the fact that such floor pricing exceeds the

actual or estimated fully allocated cost. Swetz compared the costs of PSE&G's existing service offerings with respect to central air conditioning and gas appliances to the new proposed services of heat pumps, gas grills and mini-splits. He found them to be comparable in product design, incidence of repair and material costs.

Based upon PSE&G's experience historically with those types of services, Swetz testified that the floor price for the new replacement parts service contracts would be \$86.28 for heat pump and mini-split contracts, \$39.02 for a pool heater contract, and \$20.95 for a gas grill contract. The hourly labor rate would remain \$230 consistent with that published presently for its other maintenance services. The retail price to be charged to customers would be set above the actual cost of the job which shall be comprised of the fully allocated hourly floor rate of \$230 plus the cost of materials, the individual unit, incremental costs, and taxes.

With respect to the revenues anticipated from these new offerings, Swetz testified that PSE&G projects that new net income might be \$.716 million in the first full year to \$1.785 million in the third full year. He noted that those new net revenues would only improve its rate of return by less than one-tenth of one (0.1%) percent of its gas distribution rate base of \$2.27 billion. Swetz also confirmed that the company intends to treat these new competitive service revenues above-the-line for ratemaking purposes with total margins credited to ratepayers as part of the resetting of base rates during its next base rate case proceeding.

Rate Counsel presented the testimony of David E. Peterson, a Senior Consultant with Chesapeake Regulatory Consultants, Inc., Annapolis, Maryland. Peterson worked for three years as a Rate Analyst for the South Dakota Public Utilities Commission from 1977 to 1980. Since that employment, he has worked as a consultant specializing in utility revenue requirements and cost of service analyses. Peterson has presented testimony in approximately thirty proceedings before the BPU, in addition to testimony in numerous other jurisdictions. Peterson summarized his understanding of the company's present application and then presented his concerns regarding them.

With the exception of the proposed expansion of repair replacement parts service contracts for residential pool heaters and natural gas grills, to which Rate Counsel has conceded no objection, Peterson posited that the remainder of the PSE&G proposal should be rejected as beyond the appropriate parameters set forth in EDECA. He opined that the other competitive service offerings could not be considered grandfathered under EDECA or “substantially similar” to prior service products. With respect to sewer and plumbing line protections, Peterson suggested that they were not “even remotely” involved in the company’s core business or similar to existing service offerings.

Peterson admitted that the new offerings would not adversely affect PSE&G’s ability to provide safe, adequate and reliable gas and electric service; however, nor will they advance the company’s core public service obligations. While there was no evidence that the petition was proposing competitive service pricing which would result in any cross-subsidization, Peterson was skeptical and advocated vigilance should any of the services be approved. Peterson also characterized the net margins from these proposed services as a “windfall” to the company and its stockholders at the expense of utility customers until those net margins could be reflected in the next base rate proceeding. In order to ensure that ratepayers received the benefit of new competitive service revenues as soon as possible, Peterson argued that PSE&G should be required to reflect those net margins in its annual Societal Benefits Charge rate filing or through some new rate mechanism.

Staff did not present any testimony.

FINDINGS OF FACT

1. PSE&G segregates its current and proposed competitive service offerings into: (1) protection offerings known as Appliance Repair and Maintenance Service or APSO; (2) WorryFree Replacement Parts Service Contracts; and (3) Appliance Replacement Service.

2. PSE&G presently offers APSO for small commercial or industrial appliances such as rooftop heaters and air conditioners, electric central air conditioners, central heating and water heaters, and residential pool heaters and gas grills.
3. PSE&G presently offers repair services with respect to central house heating, water heater, electric central air conditioning, kitchen and laundry appliances, gas piping, gas fireplace, gas grills, pool heaters, rooftop heating, electric rooftop and central air conditioner and has so offered some of these since 1903.
4. PSE&G presently offers the WorryFree Replacement Parts Service Contracts on central house heating, water heater, electric central air conditioning, kitchen and laundry appliances, gas piping, gas fireplace, rooftop heating, electric rooftop and central air conditioner.
5. PSE&G presently offers replacement service for water heaters, central house heating and electric central air conditioning.
6. PSE&G proposes in this filing to expand its APSO program to include residential electric, sewer, water line, and plumbing.
7. PSE&G proposes in this filing to expand its WorryFree Replacement Parts Service Contracts to include heat pumps, pool heaters, ductless heating and cooling systems (mini splits), and natural gas grills.
8. PSE&G proposes in this filing to expand its replacement service to include heat pumps, and ductless heating and cooling systems (mini splits).
9. Neither PSE&G nor any other gas or electric utility in the State of New Jersey offered home water line, plumbing or sewer protection prior to 1993.
10. The provision of home water line, plumbing or sewer protection does not relate to the safety and reliability of PSE&G's gas or electric utility service.
11. By its own non-quantitative analysis, PSE&G admits that it is "rare" for a

residential electric service line to share a trench with water, sewer or plumbing distribution services.

12. The provision of home water line, plumbing or sewer protection relates at best to the convenience and marketing advantage of one-stop home protection shopping for PSE&G or other customers.

13. The provision of residential service contracts and repair replacement parts service contracts for heat pumps, pool heaters and gas grills is substantially similar to competitive service contracts for other home appliances offered by PSE&G with Board approval.

14. The installation of mini-split HVAC systems is substantially similar to the other types of HVAC installations already performed by PSE&G on a competitive basis.

15. For the provision of home water line, plumbing or sewer protection contract services, PSE&G would be utilizing the services of independent contractors and/or independent homeowner protection service providers rather than utility employees and assets.

16. Based upon the fact that it will be outsourcing most of these new service offerings, PSE&G will not have expanded the size of its labor force available to undertake emergency utility repairs in the event of future natural or manmade disasters. At best, PSE&G and/or its competitive service customers will have familiarity with private contractors available on call and inquire of them concerning undertaking emergency non-utility repairs in the event of future natural or manmade disasters.

17. The Board historically has not required PSE&G to implement attribution of competitive service net revenues to ratepayers prior to the next filed base rate case.¹

¹ Under the Board Order in In re Public Service Electric and Gas Co., Docket Nos. GR91101574J, ER91111698J (January 24, 1994), the company was directed to use its LEAC as the mechanism for flowing the net revenue credit to customers of services that used to be free of charge but would under that Order be subject to a service charge. Nevertheless, testimony uniformly acknowledged that the base rate case is the long-standing mechanism for attribution of these competitive service revenues.

ANALYSIS AND CONCLUSIONS OF LAW

The primary issue on this petition is whether PSE&G's proposed new offerings meet the statutory criteria for expanding these programs set forth in the Electric Discount and Energy Competition Act (EDECA), N.J.S.A. 48:3-49 et seq. EDECA requires any proposed expansion of competitive services to fit within one of five categories outlined below. Even if the new competitive service fits within one of these categories, it is still within the Board's discretion to determine whether or not to approve the new service. PSE&G has the burden of proof on the application to add these new competitive services.

The relevant portions of the EDECA provide:

Subject to the approval of the board pursuant to subsection d. of this section, a gas public utility or a related competitive business segment of that gas public utility may provide the following competitive services:

- (1) Metering, billing and related administrative services that are deemed competitive by the board pursuant to this section;
- (2) Services related to safety and reliability of utility businesses;
- (3) Competitive services that have been offered by any electric or gas public utility since prior to January 1, 1993 or that have been approved by the board prior to the effective date of this act to be offered by any electric public utility or gas public utility. A gas public utility that has offered a competitive service since prior to January 1, 1993 or a competitive service that was approved prior to the effective date of this act is not required to obtain board approval pursuant to subsection d. of this section, but any gas public utility that has not offered a competitive service prior to January 1, 1993 or has not received previous board approval for such a competitive service shall apply for approval pursuant to subsection d. of this section. Except as otherwise provided by this paragraph, a competitive service that is permitted by this paragraph shall be subject to all requirements of this act for competitive services and to any standards or other rules or regulations adopted pursuant to

this act;

(4) Services that are substantially similar to competitive services that are permitted under paragraph (3) of this subsection; and

(5) Competitive services to non-residential customers using utility employees and assets.

[N.J.S.A. 48:3-58]

"Existing products and/or services" means those products and/or services, which an electric and/or gas public utility was offering prior to January 1, 1993, that have been approved by the Board prior to February 9, 1999, or an electric and/or gas public utility is offering on May 19, 2008.

[N.J.A.C. 14:4-3.2]²

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services.

[N.J.A.C. 14:4-3.2]

PSE&G argues that its proposed new services fit within the above-cited provisions of EDECA because: (1) are related to safety and reliability of utility businesses; (2) have been or are substantially similar to competitive services that have been provided by it or any other electric or gas public utility in the past, regardless of relationship to safety and reliability; and/or (3) are provided to non-residential customers using utility employees and assets. N.J.S.A. 48:3-58b. PSE&G emphasizes in its Reply Brief that EDECA quite clearly permits public utilities to provide competitive

² While still cited in the regulations, the Response to Comment document agreed with commentators who remarked that a reference to competitive offerings as of May 19, 2008, was inconsistent with EDECA:

The effective date of the EDECA was February 9, 1999. EDECA does not mention a May 19, 2008 date; therefore, the Board agrees with the commenter and will propose the deletion of the language in companion proposal.

[44 N.J.R. 1534(a)]

“[s]ervices related to safety and reliability of utility businesses” to all of its customers without limitation. N.J.S.A. 48:3-58(b)(2). It further suggests that the use of “utility businesses” in that specific provision is not restricted to gas or electric utilities.

PSE&G also argues that the expansion of a workforce to perform competitive services will enhance its ability to react to severe weather events like Hurricane Sandy. It also argues that electrical and plumbing service lines sometimes turn out to be the problem when it is responding to a customer’s appliance issue and that it is inefficient to then have to refer the customer to an outside plumber or electrician.

Rate Counsel and Board Staff agree that there is no impediment to PSE&G expanding its repair contracts and replacement parts contracts to gas grills and pool heaters. Board Staff agrees with the company that the extension of repair and replacement of mini-splits and heat pumps is simply a natural progression of the existing competitive offerings. Board Staff would limit these proposed offerings to existing residential structures and not to new construction. PSE&G agreed at the hearing that such a limitation was entirely consistent with its petition where self-contained ductless HVAC systems are needed in order to service, for example, unheated areas of an existing home undergoing remodeling.

Rate Counsel concurs that an expansion of PSE&G’s WorryFree contracts to gas grills and pool heaters should be approved because the company previously offered repairs to those appliances and thus the new service is substantially similar to a pre-EDECA service. Rate Counsel, however, disagrees with any WorryFree contract expansion of its competitive services to mini-splits and heat pumps because it argues that the HVAC foundation upon which the “similarity” is premised is itself only a post-EDECA offering. Insofar as EDECA permits only a narrow expansion of appliance service offerings by gas public utilities based upon grandfathered services, and insofar as heat pumps and mini-splits were never offered pre-EDECA, these aspects of the present application should be denied.

With respect to home plumbing, water line and sewer line protection contracts, I disagree with PSE&G and agree with Rate Counsel and Board Staff. I **CONCLUDE** that those proposed contract offerings are not similar to prior gas and electric competitive offerings of it or any other gas or electric utility company. Nor does the fact that in some unidentified but rare number of instances electrical or gas service lines are trenched together or near water and sewer lines provide sufficient justification to expand into these offerings. PSE&G argues that they are related to the safety and reliability of utility businesses but it carries the burden in this proceeding. It has failed to establish anything but a conclusory presentation on how the Board should accept *a priori* that water, sewer and electrical lines are impacted by similar events. The company testified without supporting data that various systems feeding a home must coordinate with each other. [Tr. 98:7-18] No facts or specifics were presented. As set forth in its response to Rate Counsel's discovery request RCR-22 (S-5) –

Moreover, in order to ensure safe, adequate and reliable utility service to the home, Public Service is frequently involved in or consulted with respect to the proper digging and maintenance of trenches associated with gas, electric, water and sewer distribution services. In some instances, these trenches are in fact shared. All of the competitive service offerings currently offered by Public Service as well as those proposed in the instant petition are related to the utility business or are substantially similar to existing competitive service offerings. The appliances in a home require fully functioning electric, water and sewer systems to operate properly. Among the intentions of the instant petition is to provide Public Service customers with options to purchase full service protection to ensure the safe, proper, and efficient use of their home appliances as well as to assist in ensuring the overall safety and reliability of electric and gas utility service to the home.

This is the sum total of the support for PSE&G's petition to expand its competitive service offerings to include home water and home sewer protection plans. I must **CONCLUDE** that this is a very weak rationale and does not meet the burden of demonstrating a genuine, fact-based nexus to safe and adequate gas and electric service. As any homeowner knows, a dishwasher that will not turn on or skips a cycle is a very distinct problem from the flow of water into or wastewater out from that appliance

or a washer machine. Simply because modern living almost by definition equates to residences with water and sewer service lines does not mean that protection programs for those lines is a priori essential to the safety and reliability of PSE&G's utility service.

While I might agree that Section 58(b)(2) could provide support for some future offerings, water and sewer protection programs intended to be serviced by outside vendors is far afield of the public utility obligation of PSE&G to provide safe and reliable gas and electric service. Further, while I would disagree with respondents who attempt to "what if" this application all the way to future speculative protection contracts on electronic toys, it would not be too far afield to speculate that someday PSE&G might propose to service cable, DSL or other "lifelines" into the modern home. I would suggest that what PSE&G has proposed is more in the nature of acting as the general contractor on site and utility work at the option of the homeowner who otherwise would have to do the labor of coordinating a group of outside vendors.

The application even with respect to just a home electrical protection plan also must fail. While the Board has discussed that a gas utility may provide certain competitive services within its regulated entity structure without requirement that it create an unregulated subsidy, I/M/O Petition of Jersey Central Power and Light Company for Authorization to Implement a Conditioned Power Service Program and for Approval and Acceptance of Tariff Revisions Related Thereto, BRC Order of Approval Docket No. ET92040380 (October 19, 1993), no case has been presented in which the Board approved pre-EDECA an optional home electrical protection contract. JCP&L in fact received approval in 1993 to offer a consumer electronics surge protection program or general power disturbance protection program that was neither the same as nor substantially similar to what PSE&G is requesting in this proceeding. Id.

PSE&G makes the argument, nevertheless, that these pre-EDECA cases demonstrate the types of services that have a sufficient nexus to the "safety and reliability" of any – i.e., water and sewer in addition to gas and electric -- utility businesses. It also argues that EDECA should be read that broadly. I have determined that that legal issue need not be reached because of the paucity of factual support in

the petition or the record that that there is any nexus to safety and reliability in the proposed home electrical protection contract offering. Rather, PSE&G has factually only asserted the common sense perspective that it is potentially inconvenient to the customer and/or the service technician to recognize that an electrical, water or wastewater problem exists beyond the physical confines of the actual appliance and that someone else might need to be called.

Clearly, PSE&G would prefer the opportunity to stay at the consumer's residence and solve the dishwasher dilemma through this expanded competitive service proposal. That preference does not rise to the level of proving a nexus to safety and reliability. Accordingly, on the proposed offering of a home electrical protection contract, I **CONCLUDE** that PSE&G has not supported its petition that same is substantially similar to the protections it or any other utility has offered before EDECA, or that it has a sufficient nexus to the safety and reliability of regulated utility services.

In contrast, I do agree with Staff and PSE&G and **CONCLUDE** that the offering of repairs and replacement parts service contracts to heat pumps, pool heaters, mini-splits, and gas grills, and replacement contracts for heat pumps and mini-splits are consistent with prior offerings and EDECA. To take the position as does Rate Counsel that heat pumps and mini-splits are outside of EDECA and unauthorized but that gas grills, pool heaters and larger (than mini-split) air conditioning systems are authorized by EDECA is to vault form over substance. Furthermore, as stated by the Board in its 2002 approval of PSE&G competitive offerings:

The Board's review indicates that PSE&G's proposed new Central Heater Replacement and Central Air Conditioning Replacement Programs are comparable to service appliance replacement parts services provided by New Jersey Natural Gas Company for the repair of central air conditioning units and Elizabethtown Gas Company for the repair of house heaters prior to the effective date of the Act. In addition, the proposed new programs appear to be comparable to the replacement of Central Heater and Central Air Conditioning services offered by other non-utility vendors. PSE&G already offers a replacement parts service program for water heaters, which was approved prior to EDECA on November 23, 1998, in Docket No. ET97070476. PSE&G has also

been providing appliance repair on Central House Heating and Electric Central Air Conditioners prior to EDECA, pursuant to a Board Order dated April 14, 1997, in Docket No. EC96070517. Therefore, the Board is satisfied that these services are substantially similar to the two Proposed Competitive Programs and that approval of PSE&G's request would be permissible under N.J.S.A. 48:3-58(b)(4).

In re Public Service Electric and Gas Co. for Approval to Implement Central Heater and Central Air Conditioning Replacement Programs ("PSE&G HVAC Order"), Docket No. EO98030146, 2002 N.J. PUC LEXIS 103, 19-20 (March 22, 2002)

I am also satisfied and **CONCLUDE** that these new service offerings will not interfere with PSE&G's ability to provide safe, adequate and proper utility service to customers because PSE&G will continue to prioritize utility repair and emergency work orders over these competitive services, an assertion that was not disputed or contradicted by rate Counsel.³ The fact that some additional competitive work orders will result from these new repair and maintenance offerings has the added benefit of contributing to fuller employment of utility personnel.

With respect to the issue of the proper accounting for the profit margin on these competitive services, PSE&G proposes to undertake accounting of the new services in the same manner as the Board has historically mandated. PSE&G is required to treat all net revenues from these competitive services above-the-line to the benefit of ratepayers. Rate Counsel does not disagree in principal but takes issue with the fact that these new service revenues will not be attributed to the company's revenue requirement until the next time PSE&G petitions for a full base rate case. N.J.A.C. 14:4-3.6(r)(4).⁴ Board Staff agrees that some mechanism should be implemented

³ N.J.S.A. 48:3-58(d)(1) provides:

The provision of a competitive service by a gas public utility or its related competitive business segment shall not adversely impact the ability of the gas public utility to offer its non-competitive services to customers in a safe, adequate and proper manner, and in all instances where resources are jointly deployed by the utility to provide competitive and non-competitive services and resource constraints arise, the provision of non-competitive services shall receive a higher priority[.]

⁴ N.J.A.C. 14:4-3.6(r) provides:

which would give ratepayers some benefit of these new revenues between rate cases because the revenues are made possible by the embedded costs utilized by the competitive side of the company. I respectfully disagree and **CONCLUDE** that while I have no authority to require a new methodology of recognizing these revenues prior to a full base rate case, which revenues could very well be offsetting new expenses that would otherwise drive the company in for a new rates, Rate Counsel is well aware of its ability to request that the Board force the issue. See In the Matter of the Petition of Rate Counsel Requesting a Board Order Directing Jersey Central Power and Light Company to File a Base Rate Case Petition and Establishing a Test Year of 2010, BPU Dkt. No. EO11090528, 2012 N.J. PUC LEXIS 193 (July 31, 2012). In addition, the Board itself has also rejected Rate Counsel's proposal in prior competitive service petitions:

The Board notes that the ratemaking mechanism issue raised by the RPA to address increases in revenues for the appliance services between base rate cases, would have been more appropriately addressed in the recently completed PSE&G gas base rate case proceeding, Docket No. GR01050328. The RPA is not, however, precluded from raising this issue in any other PSE&G gas rate adjustment filing.

[PSE&G HVAC Order, supra.]

Board Staff and PSE&G have also provided satisfactory evidence that the pricing of these new competitive offerings will be the fully allocated cost of such, and that ratepayers will not be subsidizing a below-market competitive service.⁵ Board Staff and

The revenues received by an electric and/or gas public utility or its related competitive business segment(s) for the provision of a competitive product and/or service shall be treated in accordance with the applicable Uniform System of Accounts (USOA), 18 CFR Part 101. Specifically, the following revenues shall be treated in the following manner:

* * *

For gas public utilities, the total margins shall be treated above-the-line for ratemaking purposes and credited to ratepayers.

⁵ N.J.S.A. 48:3-58(d)(2) provides:

The price that a gas public utility charges for a competitive service shall not be less than the fully allocated cost of providing such service, as determined by the board, which cost shall include an allocation of the

Rate Counsel urge the undersigned and the Board to require PSE&G to undertake more frequent monitoring of that floor price and hourly labor rates to ensure that today's "fully allocated" costs do not become out-of-date tomorrow. On the issue of any recommendations of a recent audit undertaken by Overland on PSE&G's competitive service offerings, I agree with the company and **CONCLUDE** that this is not an issue that has been transmitted to the OAL for determination in this proceeding. Rate Counsel will have the opportunity to comment and pursue any concerns it has in the appropriate proceeding.

ORDER

For the reasons set forth above, the application of PSE&G to expand its offerings in the competitive service contract and appliance services aspects of its regulated utility business is hereby **GRANTED IN PART** and **DENIED IN PART** as set forth above.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing such competitive service.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 5, 2013



DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

4/5/13

Date Mailed to Parties:

4/5/13

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

Jorge L. Cardenas
Stephen Swetz

For Respondent Rate Counsel:

David E. Peterson

For Respondent Board Staff:

None

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

- P-1 Appliance Service Business Tariff
- P-2 Direct Testimony of Jorge L. Cardenas, dated February 29, 2012
- P-3 Direct Testimony of Stephen Swetz, dated February 29, 2012
- P-4 Rebuttal Testimony of Jorge L. Cardenas, dated December 10, 2012
- P-5 Rebuttal Testimony of Stephen Swetz, dated December 10, 2012
- P-6 Sample Advertisements from Public Utility Holding Company Affiliates

For Respondent Rate Counsel:

- RA-1 David Peterson Direct Testimony
- RA-2 Response to RCR-6- Similar Service Offerings
- RA-3 Excerpt from Middlesex Water Company FERC Form 10-K
- RA-4 Response to RCR-19- Contract or Service Offering
- RA-5 Response to RCR-27- Joint Trenches
- RA-6 Response to S-PSEG-10- Current Length of Service Call Times

- RA-7 Response to S-PSEG-2 (cover page only) - APSO Service
- RA-8 Response to RCR-24- Compliance Filing
- RA-9 Excerpts from Audit prepared from Overland Audit Report
- RA-10 Response to S-PSE&G-22- List of Alternative Service Vendors

For Respondent Board Staff:

- S-1 Response to Rate Counsel Request RCR-12
- S-2 Response to Rate Counsel Request RCR-15
- S-3 Response to Rate Counsel Request RCR-16
- S-4 Response to Rate Counsel Request RCR-14
- S-5 Response to Rate Counsel Request RCR-22
- S-6 Response to Staff Request S-PSEG-15
- S-7 Response to Staff Request S-PSEG-19
- S-8 Response to Staff Request S-PSEG-21
- S-9 Response to Staff Request S-PSEG-7
- S-10 Response to Rate Counsel Request RCR-3
- S-11 Response to Rate Counsel Request RCR-7
- S-12 Response to Rate Counsel Request RCR-9
- S-13 Response to Rate Counsel Request RCR-11
- S-14 Response to Rate Counsel Request RCR-25
- S-15 Response to Rate Counsel Request RCR-26
- S-16 Response to Rate Counsel Request RCR-28
- S-17 Response to Rate Counsel Request RCR-29
- S-18 PSE&G – Affiliate Standards Compliance Actual Response to Rate
Counsel Request RCR-10 **CONFIDENTIAL**
- S-19 Response to Rate Counsel Request RCR-17
- S-20 Response to Rate Counsel Request RCR-2

**I/M/O the Petition of Public Service
Electric and Gas Company for Approval
to Offer New Appliance Service Products
and/or Services in Accordance with
N.J.A.C. 14:4-3.6(a) and (g)
BPU Docket No. GO12030188**

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