



State of New Jersey  
DIVISION OF RATE COUNSEL  
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May 30, 2023

**Via Electronic Mail**

Sherri L. Golden, Secretary  
New Jersey Board of Public Utilities  
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**Re: Public Service Electric and Gas Company, Notice of Sale of Real Property,  
Block 404, Lot 1.01, 1323 Broad Street, Cinnaminson, New Jersey  
BPU Docket No. EM23030138**

Dear Secretary Golden:

Please accept for filing the comments of the New Jersey Division of Rate Counsel ("Rate Counsel") concerning the Notice of Public Service Electric and Gas Company ("PSE&G" or the "Company") for approval to sell and convey the above-referenced property. Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities (the "Board") in I/M/O the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, this communication is being filed electronically with the Secretary of the Board and is being provided to each person on the service list by electronic mail only. No paper copies will follow. **Please acknowledge receipt of this comment letter.** Thank you.

### **Summary**

Rate Counsel does not object to the sale of the above-referenced property (“Property”), subject to the conditions and reservations of rights set forth below. Since the Property is the site of a former PSE&G electric substation, Rate Counsel recommends that the accounting for this transfer be fully reviewed in the Company’s next base rate case or other appropriate proceeding. In the meantime, Rate Counsel asks that the Board credit the net proceeds from the sale of the Property to ratepayers.

### **Background**

On or about April 12, 2023, PSE&G filed a Notice advising the Board and Rate Counsel that, under the terms of a contract executed on April 12, 2021, it intends to sell and convey the Property to Paul A. Walsh, Bernadette M. Walsh and James A. Walsh (collectively, “Purchasers”) for a total of \$37,025. *Notice, pp. 1 & 2 and Attachment A*. PSE&G supports its Notice with certain exhibits, including the May 3, 2021 Contract for Sale of Real Estate, executed by the parties (the “Contract”), *Notice, ¶ 3 and Ex. A*; an Unrestricted Use Remediation Action Outcome (“RAO”) dated August 12, 2019 and amended and supplemented September 4, 2020, issued by Matrix New World Engineering, PSE&G’s Licensed Site Remediation Professional (“LSRP”), *Exhibit A to the Contract of Sale*; an April 25, 2022 survey map of the Property, *Notice, Attachment B*; the October 14, 2019 Appraisal Report of the Property as of August 7, 2019 for PSEG Services Corporation by Kyle Driscoll of CBRE, Inc. (the “2019 Appraisal”), *Notice, ¶ 3; and RCR-5 & RCR 5 1323 Broad Street also known as 545 Read Avenue Cinnaminson NJ Final Appraisal*; the Purchasers’ December 1, 2020 Certification of Non-Affiliation with PSE&G, *Attachment to the Contract of Sale and Notice ¶ 4*; and the March

10, 2023 Verification of Roger J. Trudeau, Manager - Corporate Real Estate Transactions of PSEG Services Corporation, agent to PSE&G (“Trudeau Verification”), *Notice, Attachment C*. PSE&G responded to Rate Counsel’s discovery requests RCR-1 through -20 on May 15, 2023.

The Company acquired the Property in 1952, *RCR-1*; see *Matrix New World Engineering, 2/23/17 Case Inventory Document, p. 4, Enclosure 3 to Aug. 12, 2019 RAO*, from unspecified seller(s) for unspecified amounts, and built its former East Riverton electric substation on the site in 1962. *RCR-1*; *Matrix New World Engineering, Aug. 12, 2019 RAO*. The East Riverton substation was in service from approximately at least 1962 until May 2017, when it was decommissioned. *Notice, p. 1 and ¶ 7*; *RCR-1*. The Property is 15,000 square feet or 0.3443 acres in area and is currently vacant. *Notice, p. 1 and Attachment B*; *RCR-1*. The Property is no longer used or useful in PSE&G’s utility operations. *Notice, pp. 1 and ¶ 7*. PSE&G does not anticipate any future need for the Property in its operations. *RCR-3*. PSE&G does not anticipate that sale of the Property will compromise its ability to provide service. *Notice, ¶ 7*. The Property is not income producing. *Notice, ¶ 6*.

PSE&G pays annual carrying costs on the Property of \$4,058.76, consisting of \$1,636.20 in property taxes and \$2,422.56 for landscaping and maintenance. *RCR-2*. Before retiring the East Riverton substation in 2017, PSE&G accounted for these operation and maintenance costs of the Property in its cost of service, included in rates through prior base rate cases. *RCR-17*.

The Township of Cinnaminson assessed the value of the Property at \$45,000. *Notice, ¶ 6*. The Company obtained an appraisal from CBRE, Inc. Appraisers dated October 14, 2019, which valued the Property at \$37,025. *Notice, ¶ 3*; *2019 Appraisal*. The Company’s current book value of the Property is \$1,431.57. *Notice, p. 1*.

The Company did not list, advertise or market the Property. RCR-4. Paul Walsh, one of the Purchasers and owners of property immediately adjacent to the Property, contacted the Company and offered to purchase the Property at fair market value. *Id.* PSE&G did not state whether it considered listing, advertising or marketing the Property in order to obtain a higher purchase price. Since PSE&G did not anticipate any future need for the Property, the Company agreed to proceed with the sale for fair market value. *Id.* Since the fair market value and book cost value of the Property are both less than \$500,000, no legal advertisement of the sale is required by N.J.A.C. 14:1-5.6(b).

There are no orders, determinations or other administrative actions by the New Jersey Department of Environmental Protection (“DEP”) with respect to any environmental condition on the Property. RCR-6. PSEG Service Corporation, on behalf of PSE&G, retained the LSRP services of Matrix New World Engineering to investigate potential environmental impacts to soil and groundwater on the site from typical contaminants found at electrical substations, but found none. RCR-8. That investigation cost \$53,996. *Id.* Filing the amended RAO on August 12, 2019 completed PSE&G’s remediation obligations for the Property under ISRA. RCR-7.

PSE&G’s Unrestricted Use RAO describes the outcome of PSE&G’s environmental investigation and remediation work on the Property under the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. (“ISRA”); Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31; Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 and the ISRA and site remediation regulations, N.J.A.C. 7:26B and N.J.A.C. 7:26C of the DEP. The RAO allows unrestricted use on the entire site and completes PSE&G’s obligation for the Property under ISRA. RCR-7.

Since the three-year time frame for DEP to audit the RAO has passed without further DEP request for information from PSE&G, the Company does not anticipate any further environmental responsibilities or costs arising from its operations on the Property. *RCR-10*. PSE&G also does not anticipate any limits on future use of the Property due to environmental conditions. *RCR-12*.

PSE&G has not yet requested recovery of its costs for environmental investigation and remediation activities on the Property. PSE&G charged its \$53,996 in remediation costs to Cost of Removal (“COR”) in FERC Account 108, “Accumulated provision for depreciation of electric utility plant,” stating that these costs were directly associated with retirement of the East Riverton substation and its physical assets. *RCR-13*. PSE&G explained that COR is a component of depreciation expense that PSE&G collects in rates. *Id.* As PSE&G collects COR, it credits Account 108. As COR costs are incurred at retirement, Account 108 is debited. *Id.*

PSE&G estimates that it will incur closing costs of \$750 on the sale of the Property, including \$150 for the real estate broker’s commission and \$600 for title transfer and other processing fees. *RCR-18*. The closing costs will be deducted from the proceeds from the sale of the Property to arrive at “net proceeds” to account for the gain on the sale. *RCR-18 and RCR-20*.

The sale price of \$37,025 is the fair market value of the Property as vacant land, as of October 14, 2019. *Notice, p. 1 and ¶¶ 1 & 3; RCR-5 & 2019 Appraisal*.

PSE&G estimates that the net gain on the sale of the Property will be \$34,843, which it will include with all other electric distribution dispositions of property in PSE&G’s next base rate case. *RCR-19*. However, PSE&G proposes to credit only one half of the net gain on the sale of the Property to ratepayers. *Id.* PSE&G claims that this is consistent with PSE&G’s treatment

of the net gain from the sale of other PSE&G properties in its base rate cases. Id.

PSE&G estimates that it will obtain a net gain from the sale of the Property of \$34,843: gross proceeds of \$37,025, less closing costs of \$750, less the book cost of the land of \$1,432. *RCR-20*. PSE&G states it plans to record this \$34,843 to FERC Account 421.1, “Gain on Disposition of Property,” and that this would be consistent with the Uniform System of Accounts. Id.

The sale will be “As Is.” *Notice, Attachment A, ¶¶ 8, 15 & 17*. The Purchaser represents that it has conducted its due diligence, and will assume responsibilities for and hold PSE&G harmless against any and all claims, including any environmental liabilities, arising from the Property. *Notice, Attachment A, ¶¶ 9, 10 & 15*. The Purchaser represents that it has the financial ability to meet its obligations for all of the Company’s environmental liabilities arising from the Property. *Notice, Attachment A, ¶ 16*. However, the Contract does not indicate that the Purchasers have provided any specific financial assurance to support their agreement to hold the Company harmless. *RCR-11*. PSE&G will record the hold harmless with the deed to the Property, as notice to any potential future purchaser of the Property. Id.

By obtaining the RAO, PSE&G has completed the environmental review process required by the DEP under ISRA. *Notice, Ex. A, ¶ 6; RCR-7*. Accordingly, PSE&G does not anticipate needing to maintain any institutional or engineering controls for residual environmental conditions on the Property.

The Licensed Site Remediation Professional retained by PSE&G has reported to the DEP the environmental investigation and remediation activities it has performed on the Property, and their costs. *RAO, Exhibit A to the Contract of Sale*. Since PSE&G did not find any soil or

groundwater contamination on the Property, it has no basis to request recovery of its costs for environmental investigation and remediation activities relating to the Property from its insurers or any responsible party.

There is no past or present relationship between the Company and the Purchasers other than as buyer and seller in this transaction. *Notice*, ¶ 4 and *Certification of Non-Affiliation, Attachment to the Contract of Sale*.

The Contract expressly states that sale of the Property is subject to Board approval. *Notice, Attachment A, ¶¶ 14 & 20*.

#### **Applicable Board Statute and Regulations**

The applicable law for a utility conveyance of property is N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. PSE&G is proceeding in this matter under the Notice of Sale provisions of N.J.A.C. 14:1-5.6. PSE&G must show that the sale of the Property is for fair market value, and will not adversely affect its ability to render safe, adequate and proper service or otherwise prejudice the public interest. *See N.J.A.C. 14:1-5.6(g)(1)*. As explained below, Rate Counsel does not object to PSE&G proceeding in this matter by a Notice of Sale under N.J.A.C. 14:1-5.6.

The Property is not currently used or useful to the Company, and it is not income producing. PSE&G's appraisal on October 14, 2019 indicated a fair market value of the Property of \$37,025, and the Purchasers have agreed to purchase the Property for that price.

PSE&G states that it has completed the required investigation of environmental conditions on the Property, and has not identified any environmental condition requiring remediation. Accordingly, PSE&G states that it has no obligation to conduct any further environmental work on the Property. The Purchasers will assume all of PSE&G's potential

environmental liabilities and responsibilities for the Property. Selling the Property will enable PSE&G to discontinue paying carrying costs on the Property and transfer to the Purchasers its environmental liabilities and responsibilities for the Property. Based on those representations and the information provided, approval of the sale of the Property should not adversely affect the ability of PSE&G to properly serve the public or otherwise prejudice the public interest. See N.J.A.C. 14:1-5.6(g)(1).

Although Rate Counsel does not object to the sale, Rate Counsel objects to PSE&G's proposal to credit only one half of the proceeds from this sale to ratepayers. In other matters, PSE&G has credited 100% of the net proceeds from the sale of a property to ratepayers.<sup>1</sup> Here, ratepayers have paid for the acquisition and operation of the Property through their rates for at least 60 years. PSE&G will also ask ratepayers to pay approximately \$54,000 for environmental investigation costs. Since PSE&G closed its East Riverton substation on the Property in 2017, ratepayers have continued to pay the annual carrying costs on this Property of approximately \$4,000; this amounts to carrying costs of approximately \$24,000 during the six years the Property has not been used or useful to PSE&G operations. Adding just those recent carrying costs of \$24,000 to the remedial investigation costs of \$54,000, since the deactivation of the East

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<sup>1</sup> See e.g., I/M/O Petition of PSE&G for Approval of the Sale and Conveyance of Real Property Located at 65 Duffield Avenue, with a Municipal Tax Map Designation of Block 7402, Lot 15, Qualifier HM, in the City of Jersey City, County of Hudson and State of New Jersey to BPG Acquisisitons LLC, a Limited Liability Company for the Sum of \$7,100,000, BPU Docket No. EM21030674, Order Approving Sale of Real Property (July 14, 2021) (net proceeds of property sale credited to deferred Remediation Adjustment Clause balance); I/M/O Petition of PSE&G for Approval of the Sale and Conveyance of Real Property Located at 248 Stickles Pond Road, with a Municipal Tax Map Designation of Block 151, Lots 21 and 21Q0028, 210 in the Township of Andover, County of Sussex and State of New Jersey to Series 2, P.S., a Separate Series of BBIS Investment 767, LLC, a Delaware Limited Liability Company for the Sum of \$2,000,000, Order Approving Amended Contract for Sale of Real Property (Oct. 28, 2021) (net proceeds of property sale credited as an offset to the Susquehanna-Roseland electric transmission project).



Riverton substation ratepayers have paid approximately \$78,000, or twice the fair market value of the Property, while receiving no public utility service in return. Moreover, a question remains as to whether PSE&G could have obtained a higher price than its 2019 Appraisal if it had decided to list, advertise or market the Property rather than just sell it to a neighbor. Given those facts, it would be unfair for PSE&G to keep any portion of the \$34,843 net proceeds from the sale of the Property.

### **Conclusion**

Rate Counsel does not object to the proposed sale of the Property by PSE&G, subject to the terms and conditions set forth below. Rate Counsel recommends that the accounting for any investigation, remediation, non-remediation or operational costs of the Property be reviewed in PSE&G's next base rate case or other appropriate proceeding directed by the Board.

Rate Counsel reserves all rights to review the Company's accounting for all costs and revenues from the acquisition, ownership, operation, investigation, remediation and sale of the Property in PSE&G's next base rate case or other appropriate proceeding for prudence, recoverability and allocation. Accordingly, in any Order approving this Property transfer, Rate Counsel respectfully asks the Board to require PSE&G to meet the conditions set forth below:

1. PSE&G shall notify the Board and Rate Counsel if it anticipates any material changes in the terms of the sale of the Property.
2. PSE&G shall credit to ratepayers the full net gain on the sale of the Property;
3. Rate Counsel retains all rights to review all costs and proceeds related to the acquisition, ownership, operation, investigation, remediation, and sale of the Property in PSE&G's next base rate case or another appropriate proceeding directed by the Board.

4. Approval of the proposed sale of the Property does not include or imply any position as to the prudence, recoverability or allocation of PSE&G's costs to investigate or remediate the Property.
5. This Order shall not affect nor in any way limit the exercise of the authority of the Board or of this State, in any future proceeding with respect to properties, rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting PSE&G.
6. Nothing in this comment letter shall be construed to affect PSE&G's liability for Natural Resource Damages or other responsibilities or damages arising from its activities at any site or PSE&G's responsibilities or claims in any other matter arising from environmental investigation and remediation of any property it has owned or operated.

Respectfully submitted,

BRIAN O. LIPMAN  
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ Brian Weeks  
Brian Weeks, Esq.  
Deputy Rate Counsel

c: Service List (via e-mail)  
Enclosure  
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