

June 9, 2023

Via Electronic Mail

Sherri Golden, Board Secretary
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350
board.secretary@bpu.gov

**Re: Notice of Sale of Utility Property Pursuant to N.J.A.C. 14:1-5.6
1323 Broad Street, Cinnaminson, New Jersey
BPU Docket No. EM23030138**

Dear Secretary Golden:

Public Service Electric and Gas Company (“PSE&G” or the “Company”) submits these comments in response to the comments filed by the New Jersey Division of Rate Counsel (“Rate Counsel”) on May 30, 2023 (“Rate Counsel Comments”) in connection with PSE&G’s notice of sale of utility property at 1323 Broad Street, Cinnaminson (the “Cinnaminson Property”).

PSE&G notes that Rate Counsel does not object to PSE&G’s sale of the Cinnaminson Property; however, Rate Counsel requests that the Board require PSE&G to meet the following condition as part of the sale: “PSE&G shall credit to ratepayers the full net gain on the sale of the Property.”¹ PSE&G objects to this request as both procedurally inappropriate and substantively unfounded. PSE&G requests that the Board deny Rate Counsel’s requested condition or, alternatively, defer consideration of this issue to the Company’s next base rate case.

I. This Docket is not Procedurally Appropriate for a Board Decision on Allocation of the Proceeds of the Transaction at Issue

Per the governing regulation, the transaction at issue does not require Board approval and should be resolved via Secretarial certification. Therefore, this docket is not the appropriate forum to resolve any dispute regarding allocation of sale proceeds. The Board should reject Rate Counsel’s request as procedurally improper and may, as the Board has in the past, review issues related to allocation of property sale proceeds in the normal course in the Company’s next base rate case.

¹ Rate Counsel Comments at 9.

N.J.A.C. 14:1-5.6(d) governs the sale of real property not used by or useful to a public utility and having a net book cost and sale price not in excess of \$500,000. That regulation does not require that the Board approve the transaction or any aspect thereof. Rather, it requires the Secretary to certify the notice so long as the utility demonstrates that the sale “is in the ordinary course of business and within the statutory provision.”²

Rate Counsel does not dispute that the sale satisfies the regulation. Therefore, the Board should reject Rate Counsel’s attempt to write additional requirements into Board regulations. Moreover, it is not appropriate to resolve issues related to allocations of sales proceeds via a Secretarial certification. This would be particularly inappropriate in this docket where, not only is the transaction one that does not require approval, but Rate Counsel also is seeking a change to established prior policy on allocations (as is set forth in more detail below).

Rather, the Board typically reviews ratemaking treatment of property sale proceeds in base rate cases. This is made clear in the Secretary’s office’s prior letters issued pursuant to N.J.A.C. 14:1-5.6(d). For example: in 2021, PSE&G filed a notice under the governing regulation for the sale of property in New Brunswick that, like the transaction at issue in this docket, did not require BPU approval.³ The Secretary’s certification letter stated:

[The Secretary’s certification] does not affect or in any way limit the authority of the Board to revisit any issues related to the ratemaking treatment of this transaction in an appropriate subsequent rate proceeding, including whether and to what extent any of the revenues, costs or expenses associated with this sale should be allocated to ratepayers[.]⁴

That Secretary approval is attached as **Attachment A**. The Secretary used identical language in prior approvals of property sales under this regulation.⁵ A second example is attached as **Attachment B**.

PSE&G submits that the planned allocation of sale proceeds is appropriate, as stated below. However, to the extent that the Secretary’s office or Board believes further inquiry on this matter is appropriate, such issues should be deferred to the Company’s next base rate case.

II. PSE&G’s Proposed Allocation is Appropriate

Since the governing regulation does not contemplate review of allocation of sale proceeds, PSE&G’s allocation plans were not part of PSE&G’s notice. Instead, (and unrelated to

² N.J.A.C. 14:1-5.6(e).

³ Notice of Sale of Real Estate Public Service Electric and Gas Company Property Address: 786 Jersey Avenue, New Brunswick, NJ, BPU Docket No. EM21111215 (Notice Dated November 8, 2021).

⁴ Id., Secretary’s Letter Dated January 18, 2022.

⁵ See, e.g., Notice of Public Service Electric & Gas Company’s Proposed Sale of Real Property in the Borough of Pompton Lakes, Passaic County, New Jersey to David and Nancy Damato for the Sum of \$200,000, BPU Docket No. EM19070773, Letter from Board Secretary (September 16, 2019).

the requirements in N.J.A.C. 14:1-5.6(d)), Rate Counsel served discovery that requested sale proceed allocation plans. PSE&G's response, in relevant part, was:

The net gain on sale estimated at \$34,843 will be included with all other electric distribution dispositions of property in the Company's base rate case. Consistent with the treatment of dispositions on sales of property in the Company's previous base rate cases, PSE&G allocates one-half of the net gain on sales of property, net of associated income taxes, to customers based on a five-year average.

This has been PSE&G's longstanding allocation methodology for real property sales, and the Company has explicitly explained this methodology in past base rate petitions, including in the Company's two most recent petitions in 2018 and 2009. Indeed, PSE&G's allocation is not atypical. In a 2014 order approving the sale of property by petitioner United Water Toms River, Inc., the Board explicitly cited petitioner's statement of "the Board's normal practice of 50/50 sharing losses and/or gains from the sale of property between ratepayers and shareholders."⁶

III. Rate Counsel's Cited Precedent Does Not Support Its Allocation Proposal

Rate Counsel asserts that PSE&G's use in this transaction of the 50/50 allocation previously employed by PSE&G and other utilities should be altered because PSE&G used Rate Counsel's proposed allocation in two prior similar matters. Rate Counsel is wrong. The two prior examples Rate Counsel cites concerned utility land sales under inapplicable Board precedent and circumstances. Neither serves as precedent for the sale of the Cinnaminson Property.

a. The Duffield Avenue Sale is Inapplicable Because It Was Completed Pursuant to a Board Order Regarding the Manufactured Gas Plant Remediation Program

Rate Counsel states that PSE&G's 2021 sale of 65 Duffield Avenue in Jersey City is an appropriate model for this matter.⁷ Rate Counsel is incorrect, because PSE&G sold that land pursuant to a 2003 Board order restricting how PSE&G could sell former manufactured gas plant ("MGP") sites after remediation, when those remediation costs were recovered through the Company's Remediation Adjustment Clause. That 2003 order directed the following:

Upon the sale of any property whose purchase has previously been charged to the remediation clause, the proceeds of such sale, less the expense of sale, will be credited to the deferred remediation program expenditures.⁸

⁶ In the Matter of the Petition of United Water Toms River, Inc. for Approval to Sell Its Administrative Offices as a Result of Superstorm Sandy, BPU Docket No. WM14070708, Order Approving Sale (September 30, 2014).

⁷ Rate Counsel Comment Letter at 8, citing 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 Acquisitions 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).

⁸ In the Matter of the Petition of Public Service Electric and Gas Company for Approval to Increase Its Remediation Adjustment Clause, BPU Docket No. GR01110773, Order Approving Stipulation (May 20, 2003).

The Cinnaminson Property was not remediated as part of PSE&G's MGP remediation program. The Remediation Adjustment Clause matters involved protracted proceedings and negotiations that were specific to the circumstances, the results of which cannot be baldly applied to all other property sales. Therefore, the Duffield sale is not applicable precedent to this matter.

b. The Stickles Pond Road Sale is Inapplicable Because the Original Purchase Price was Charged to a Transmission Project

Rate Counsel is similarly incorrect that PSE&G's 2021 sale of 248 Stickles Pond Road in Andover is applicable.⁹ PSE&G purchased that property in 2012 in connection with the Susquehanna-Roseland Electric Transmission Project, and, as described in PSE&G's petition, charged the purchase cost to the Project.¹⁰ Therefore, when PSE&G filed a petition to sell the land seven years later, PSE&G proposed crediting the proceeds back to the Project as an offset to construction costs.¹¹

The Cinnaminson Property was not purchased as part of a project and charged to that project. Rather, and as PSE&G described in its notice, the Cinnaminson Property contained a PSE&G substation until that substation was decommissioned. Therefore, the Stickles Pond Road sale also is not applicable precedent to this matter.

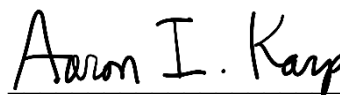
IV. Conclusion

Based on the above, PSE&G requests that the Board Secretary certify PSE&G's proposed transaction without the condition requested by Rate Counsel. The typical language included in prior Secretarial certification letters is sufficient to ensure review of allocations related to this transaction in the Company's next rate case. Should the Board determine it is appropriate in this proceeding to opine on the proper allocation for this transaction, the Board should find that the 50/50 allocation is appropriate, as is consistent with prior policy.

* * *

Thank you, and please do not hesitate to contact me should you have any questions.

Very truly yours,



Aaron I. Karp

⁹ Rate Counsel Comments at 8, citing 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, BPU Docket No. EM19091002 (Order Dated Oct. 28, 2021) ("248 Stickles Pond Road Petition").

¹⁰ 248 Stickles Pond Road Petition ¶ 8 (filed September 4, 2019).

¹¹ Id.

**Public Service Electric and Gas
Company Sale of Real Property Broad
Street, Cinnaminson, New Jersey**

BPU Docket No. EM23030138

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January 18, 2022

Ana J. Murteira, Esq.
Public Service Electric and Gas Company
80 Park Plaza
Newark, New Jersey 07102

Re: Notice in accordance with N.J.A.C. 14:1-5.6(d)3
Notice of Sale of Real Estate Public Service Electric and Gas Company Property
Address: 786 Jersey Avenue, New Brunswick, NJ
Docket No. EM21111215

Dear Ms. Murteira:

On November 8, 2021, Public Service Electric and Gas Company ("PSE&G" or "Company") filed a Notice with the New Jersey Board of Public Utilities ("Board") seeking authorization for the sale of real property to 786 Jersey Avenue LLC for a sum total of \$300,000. The Notice is required pursuant to N.J.A.C. 14:1-5.6(d)3, which provides that utilities may enter into such transactions, upon not less than 30 days' notice to the Board, provided that the property is not used by or useful to the utility, and that the book cost and sale price are not in excess of \$500,000.

The New Jersey Division of Rate Counsel ("Rate Counsel") filed comments on January 6, 2022 and did not object to the sale.

This letter is to acknowledge that, after review of the Notice, the proposed sale as described in the Company's filing is deemed to be in the ordinary course of business under N.J.A.C. 14:1-5.6(d)3. Accordingly, pursuant to N.J.A.C. 14:1-5.6(e), enclosed is a certified true copy of the Notice. PSE&G shall notify the Board and Rate Counsel if it anticipates any material changes in the transfer of the Property or the purchase of the New Easement.

Ana J. Murteira
January 18, 2022
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This acknowledgement is subject to continuing review by Board Staff. Further, this acknowledgment: (1) does not affect or in any way limit the authority of the Board to revisit any issues related to the ratemaking treatment of this transaction in an appropriate subsequent rate proceeding, including whether and to what extent any of the revenues, costs or expenses associated with this sale should be allocated to ratepayers; and (2) is for accounting purposes only.

Sincerely,



Aida Camacho-Welch
Secretary of the Board

/ac
Enclosure
c: Service List

NOTICE OF SALE OF REAL ESTATE PUBLIC SERVICE ELECTRIC AND GAS COMPANY
PROPERTY ADDRESS: 786 JERSEY AVENUE, NEW BRUNSWICK, NJ

DOCKET NO. EM21111215

SERVICE LIST

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Philip D. Murphy
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Aida Camacho-Welch
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Tel. # (609) 292-1599

September 16, 2019

Ana J. Murteira, Esq.
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Re: Notice in accordance with N.J.A.C. 14:1-5.6(d)3
Notice of Public Service Electric & Gas Company's Proposed Sale of Real Property in
the Borough of Pompton Lakes, Passaic County, New Jersey to David and Nancy
Damato for the Sum of \$200,000
Docket No. EM19070773

Dear Ms. Murteira:

On June 27, 2019, Public Service Electric and Gas Company ("Company") filed a notice with the New Jersey Board of Public Utilities ("Board") seeking authorization for the sale of real property to David and Nancy Damato for a sum total of \$200,000. The notice is required pursuant to N.J.A.C. 14:1-5.6(d)3, which provides that utilities may enter into such transactions, upon not less than 30 days' notice to the Board, provided that the property is not used by or useful to the utility and that the book cost and sale price are not in excess of \$500,000.

This letter is to acknowledge that, after review of the notice, the proposed sale as described in the Company's filing is deemed to be in the ordinary course of business under N.J.A.C. 14:1-5.6(d). Accordingly, pursuant to N.J.A.C. 14:1-5.6(e), enclosed is a certified true copy of the notice.

This acknowledgement is subject to continuing review by Board Staff of the internal labor booked to this matter. This acknowledgment: (1) does not affect or in any way limit the authority of the Board to revisit any issues related to the ratemaking treatment of this transaction in an appropriate subsequent rate proceeding, including whether and to what extent any of the revenues, costs or expenses associated with this sale should be allocated to ratepayers; and (2) is for accounting purposes only.

Sincerely,

A handwritten signature in blue ink that reads "Aida Camacho-Welch".

Aida Camacho-Welch
Secretary of the Board

Enclosure
c: Service List

Notice of Public Service Electric & Gas Company's Proposed Sale of Real Property in the Borough of Pompton Lakes, Passaic County, New Jersey to David and Nancy Damato for the Sum of \$200,000 - Docket No. EM19070773

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