

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 17 Electric and B.P.U.N.J. No. 17 Gas, and for Changes in Depreciation Rates, Pursuant to *N.J.S.A. 48:2-18*, *N.J.S.A. 48:2-21* and *N.J.S.A. 48:2-21.1*, and for Other Appropriate Relief

Docket No. ER23120924

EXCEPTIONS AND COMMENTS OF ELECTRIFY AMERICA, LLC

Electrify America, LLC (“Electrify America”) provides the following exceptions and comments to the Initial Decision dated October 4, 2024. Electrify America is the largest open direct current fast charging (“DCFC”) network in the United States, including 27 locations with 126 individual DC fast chargers in New Jersey, of which the majority – 18 locations – are within PSE&G’s service territory. Electrify America was granted participant status in the above-captioned proceeding, with the right to submit exceptions to the Initial Decision.

Electrify America submits its objection to the process that resulted in the Stipulation of Settlement that was approved in the Initial Decision, as well the following exceptions to the Stipulation of Settlement itself. Electrify America was denied intervention in this proceeding because PSE&G opposed Electrify America’s intervention and argued to the Administrative Law Judge that this proceeding was merely a prudency review of its prior-approved electric vehicle program. However, PSE&G mischaracterized the scope of this proceeding, as it is much more than a prudency review. Instead, PSE&G is seeking to implement a new DCFC rate. Electrify America was denied the opportunity to have any meaningful input as to how this proposed rate was designed and how it will be implemented. As a unique type of customer, one that enables the state’s public policy of transportation electrification and that stands to become a potential

competitor of PSE&G if providers of last resort provisions take effect, Electrify America should have had the opportunity to meaningfully participate in this proceeding.

On December 29, 2023, Public Service Electric and Gas Company (“PSE&G”) filed a petition before the New Jersey Board of Public Utilities (“Board” or “BPU”), commencing a rate case and seeking an increase in PSE&G’s electric and gas rates pursuant to tariffs approved by the Board (“Petition”). In the Petition, PSE&G described its Clean Energy Future – Electric Vehicle (“CEF-EV”) program, including a request for cost recovery and prudency review of CEF-EV investments and expenditures and approval for future rate adjustments. (Petition ¶¶ 53-57; Exhibit P-9E, Exhibit P-11). The Public DC Fast-Charging subprogram was described as a key feature of PSE&G’s CEF-EV program. (Exhibit P-11, at p. 4). On February 26, 2024, Electrify America submitted a Motion to Intervene in which it explained its interest in this proceeding. In the motion, Electrify America argued that this rate proceeding presented an opportunity to consider any modifications or changes to PSE&G’s CEF-EV program, while also noting that its participation would build upon its previous record of advocacy with the goal of creating a supportive utility environment for EV infrastructure, and that the rates and tariffs approved in this proceeding would have a direct, pecuniary impact on its stations in PSE&G’s service territory.

On February 27, 2024, PSE&G opposed Electrify America’s Motion to Intervene. PSE&G stated the following in opposition to Electrify America’s request:

The “CEF-EV program” is PSE&G’s electric vehicle program, filed in 2018 and approved by the BPU in January 2021. (*In the Matter of the Petition of Public Service Electric and Gas Company for Approval of Its Clean Energy Future – Electric Vehicle and Energy Storage (“CEF-EVES”) Program on a Regulated Basis*, BPU Docket No. EO18101111, Decision and Order Approving Stipulation (January 27, 2021) (“CEF-EV Order”). Electrify America intervened in the CEF-EV proceeding and did not object to the stipulation that the BPU approved. (CEF-EV Order at 18). PSE&G’s rate filing here seeks only prudency review and cost recovery for CEF-EV investments the BPU authorized in January 2021, and does not seek any changes to the program.

PSE&G explained that this proceeding would not result in any changes and would only seek cost recovery and prudence review of the CEF-EV Order. The ALJ issued an Order dated April 10, 2024, agreeing with PSE&G and the Division of Rate Counsel denying Electrify America’s request to intervene. Instead, the ALJ granted Electrify America participant status, which entailed a more limited role in the proceeding but included the right to file exceptions to the initial decision. The ALJ relied on PSE&G’s representation that “[t]his proceeding is not the appropriate place to modify the company’s DC Fast Charging program. I am persuaded that this matter is limited to a prudence review of prior Board approved DC Fast Charging program.” (Apr. 10, 2024 Order at p. 8). At PSE&G’s explicit request, Electrify America was denied the opportunity to intervene in this proceeding. Accordingly, Electrify America had no effective bargaining power to negotiate with PSE&G or otherwise seek any modifications to the CEF-EV program or any other issues related to DCFC rates or tariffs. Moreover, it was entirely unclear what proceeding would be the appropriate place to modify PSE&G’s DCFC rate or the prior-approved electric vehicle program.

Over the course of this proceeding, it became clear that PSE&G was seeking to modify its program and have the Board approve a new DCFC rate. In revised testimony submitted July 15, 2024, well after the deadline to intervene and the ALJ’s Order denying Electrify America’s request to intervene, PSE&G submitted the following:

PROPOSED DCFC DISTRIBUTION KILOWATT-HOUR CHARGE

Q. Have you proposed a new Distribution kWh charge for customers who receive service solely as a DCFC facility serviced under the LPL-S Rate Schedules in lieu of the current annual and summer demand charges?

A. Yes.

Q. Can you please describe the charge?

A. As described in the C&I EV COSS section on page - 50 - earlier in my testimony, the kWh cost-based rate based upon the historic usage of 34 DCFC customers is \$0.032977 per kWh.= without SUT. To develop a Distribution kWh rate that is comparable to the current Annual and Summer Demand Charge for the LPL-S Rate Schedule, the rate is adjusted

for the ratio of the proposed LPL-S Annual and Summer Demand Revenue of \$219,900,000 versus its cost to serve of \$235,637,170 or 0.928971. As a result, the proposed DCFC Distribution kWh charge is \$0.032977 per kWh. without SUT (\$0.035162 per kWh with SUT).

(Direct Testimony of Stephen Swetz, Electric Cost of Service and Rate Design, Exhibit P-9E R-2, at p. 59). The Stipulation of Settlement incorporates changes to the applicable DCFC distribution rate, as PSE&G seeks approval for “[v]arious changes and updates to its electric and gas tariffs, including ... a distribution kilowatt-hour (‘kWh’) charge for Direct Current Fast Charger EV customers to replace demand charges.” (Stipulation of Settlement at p. 4). PSE&G acknowledges that “[t]he Company will begin to offer a new Distribution kWh charge for LPL-S Rate Schedule customers who receive service solely for Direct Current Fast Charging (‘DCFC’) facilities.” (Stipulation of Settlement, Attachment E at p. 8). PSE&G submits revised tariffs in Attachments E and H of its Stipulation of Settlement memorializing these changes.

This proceeding was not merely a prudence review of PSE&G’s CEF-EV program. Rather, this was an overhaul of the distribution rates for DCFC customers. This was done without any input from the DCFC customers themselves and was done after PSE&G effectively blocked Electrify America’s ability to meaningfully weigh-in and evaluate the proposed changes. PSE&G is fully aware of the robust record of advocacy Electrify America has in New Jersey regarding demand charge relief, both in utility rate proceedings and at the legislature, but at no point before or during this proceeding was PSE&G forthright about its intentions to modify DCFC rates. PSE&G mischaracterized the full scope of this proceeding when it opposed Electrify America’s intervention, including by not raising its proposal for a new DCFC rate until mid-way through the proceeding. Electrify America objects to how this proceeding was conducted, including how PSE&G approached Electrify America’s request to intervene, how PSE&G alerted parties and participants to this new DCFC distribution rates mid-way through the proceeding, and the fact that

a DCFC rate may be approved in this proceeding without any input from Electrify America or other, similarly-situated customers.

Rate design is a key determinant of the extent to which Electrify America and other DCFC companies become competitors of PSE&G in the charging market. Rates that put private charging providers at an economic disadvantage increase the likelihood of PSE&G eventually requesting and receiving approval to own and operate a charging network with a robust footprint, because such rates could disincentivize private investment in DCFC infrastructure in certain areas, manufacturing areas of last resort that would not otherwise exist if these rates were different. Electrify America understands and appreciates that the BPU's intent is to avoid utility ownership of DCFC stations and is willing to create additional, targeted incentives to attract private investment to specific areas.¹

However, Electrify America's concern is that this approach could create a painstaking process that delays the commissioning of DCFC stations for at least 5 years. Effectuating favorable rates that attract private investment is a much more efficient means of growing the network of DCFC infrastructure and avoiding utility ownership of charging stations. Furthermore, ratepayers would bear increased costs were PSE&G permitted to own and operate DCFC stations at a risk-free, BPU-approved rate of return in the event of market failure, and the mere specter of this dynamic is already top of mind in investment decisions for Electrify America in New Jersey as it considers its ability to compete on an equitable basis. Therefore, PSE&G should not be seeking approval of a new DCFC rate without any input from Electrify America or the other DCFC companies that will be directly impacted by the new rate.

¹ See BPU Docket Nos. EO20110730, EO21030630, EO18020190, & EO18101111, Order at 5 (September 27, 2023) (“The Board HEREBY DIRECTS that Areas of Last Resort be modified to locations that have not generated private investment interest for a minimum of 24 months after the EDC program has begun, for overburdened communities, or 36 months for other areas”).

Disturbingly, Electrify America will be forced to transition to the new DCFC rate under the filed tariffs, even if its costs would be lower on existing rates – for example, because it has invested in energy storage. This may perpetuate market failure, furthering the potential profit for PSE&G investors should the utility be then permitted to own and operate charging infrastructure with ratepayer funds. The filed tariffs also do not contain sufficient protections for Electrify America’s DCFC investments in PSE&G’s service territory to not be harmed by making the new rate optional, and also poorly define sufficient protections for ancillary usage, such as lighting or a maintenance outlet, that is commonly behind the same meter at a DCFC location but that otherwise does not preclude participation in a DCFC rate for most utilities.

While the Board may be inclined to adopt the Initial Decision and approve the Stipulation of Settlement, Electrify America strongly opposes the proposed DCFC rate as described in Attachments E and H of the Stipulation of Settlement, and requests that it be rejected, with instructions that PSE&G must file a new petition in which to seek modification of its DCFC rate—this time with the permitted inclusion of the affected customers themselves.

Respectfully submitted,



Dated: October 7, 2024

By: _____
William Lesser (N.J. Attorney ID 162532015)
COZEN O’CONNOR, PC
3 WTC
175 Greenwich Street, 55th Floor
New York, New York 10007
(212) 453-3808
wlesser@cozen.com