



Public Service Electric and Gas Company P.O. Box 236 Hancocks Bridge, New Jersey 08038-0236

Nuclear Business Unit

OCT 22 1999

LR-N99465
LCR H99-06 & LCR S99-14
Docket Nos. 50-272, 50-311, 50-354,
50-277 & 50-278

U.S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, D.C. 20555

**Salem Generating Station, Units 1 & 2,
Hope Creek Generating Station, Unit 1,
Peach Bottom Atomic Power Station, Units 2 & 3
PSE&G Proposed License Transfer and Conforming License Amendments
Supporting Reorganization of Public Service Electric and Gas Company
Response to Request for Additional Information**

Gentlemen:

This letter provides Public Service Electric and Gas Company's (PSE&G's) response to the Request for Additional Information made by the U.S. Nuclear Regulatory Commission on October 7, 1999. This information relates to the proposed transfer of the licenses for the Salem Nuclear Generating Station, Units 1 and 2, Hope Creek Generating Station, and Peach Bottom Atomic Power Station, Units 2 and 3.

PSE&G has concluded that the information contained in this letter and its attachments do not alter the conclusions reached in the 10CFR50.92 No Significant Hazards analysis previously submitted with the original License Change Requests (LCR H99-06 & S99-14). If you need additional information, please contact Jeffrie Keenan at (856) 339-5429.

Sincerely,

M. B. Bezilla
Vice President - Operations

A001

PD R. ADock

The power is in your hands.

OCT 22 1999

Attachments (2)
Affidavit

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REF: LCR H99-06
LCR S99-14
LR-N99465

STATE OF NEW JERSEY)
)
COUNTY OF SALEM) SS.

M. B. Bezilla, being duly sworn according to law deposes and says:

I am Vice President – Operations of Public Service Electric and Gas Company, and as such, I find the attachment accompanying this correspondence (LR-N99465), concerning the Salem Generating Station, Units 1 and 2, and the Hope Creek Station, Unit 1, are true to the best of my knowledge, information and belief.

M. B. Bezilla

Subscribed and Sworn to before me

this 22nd day of October, 1999

Jennifer M. Turner

Notary Public of New Jersey

JENNIFER M. TURNER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 25, 2000

Financial Qualifications

The source of funding for operating costs of the nuclear plants is to come from the sale of power to PSEG Energy Resources and Trade Limited Liability Company. There is a 3-year contract to sell at prices fixed by the Stipulation Agreement and at wholesale market prices after that.

1. *What effect will the New Jersey Board of Public Utilities (BPU) mandated rate cuts have on PSEG Nuclear's income and its ability to meet operations and maintenance costs?*

Under the New Jersey electric restructuring legislation, Public Service Electric and Gas Company (PSE&G) customers are to receive four rate reductions over a three-year period. These rate reductions will not have any impact on PSEG Nuclear's income or on its ability to meet operations and maintenance costs.

As explained in the license transfer application, the power purchase agreement between PSEG Nuclear LLC (PSEG Nuclear) and PSEG Energy Resources and Trade LLC (PSEG ERT) specify that PSEG ERT will take all energy and capacity from the PSEG Nuclear generation assets, and that PSEG ERT will make payments to PSEG Nuclear covering generating costs, including operations and maintenance costs, capital additions, and fuel costs. This obligation to cover PSEG Nuclear's generating costs exists independent of the mandated rate cuts.

A copy of the draft power purchase agreement between PSEG Nuclear and PSEG ERT is provided as Attachment 2. (See Paragraphs 6.1 and 10.2.) The agreement has been submitted to the Federal Energy Regulatory Commission (FERC) for acceptance under Section 205 of the Federal Power Act. By order of September 29, 1999 (88 FERC ¶ 61,299), FERC has conditionally accepted the agreement for filing. (In compliance with that FERC order, PSE&G will be making modifications to the power purchase agreement to provide further specificity in the rate methodology. This will not impact PSEG ERT's obligation to PSEG Nuclear.)

The license transfer application also included: 1) an estimate of PSEG Nuclear's Estimated Operating Costs (Appendix 9 in original LCR submittal); and 2) an Income Statement, Cash Flow Projection, and Nuclear Revenue Projection (Appendix 10 in original LCR submittal) for PSEG Power, the holding company parent of PSEG Nuclear, PSEG Fossil LLC, and PSEG ERT. The legislatively-mandated rate cuts are already addressed in and bounded by the models used

to make these projections.¹ Therefore, the rate cuts will not impact upon PSEG Power's ability to make the required payments to PSEG Nuclear.

For example, as noted in Appendix 10, note 1, revenue projections assume that nuclear power output is sold at market rates. However, under PSEG Power's three year obligation to supply Basic Generation Service to PSE&G, nuclear output used to satisfy the BGS obligation will be sold at rates as established in the Stipulation Agreement, which include the required price reductions.

2. *The applications state that PSEG Power will have sufficient assets to fund an extended shutdown at one or more of the nuclear units. How much money is available for this purpose?*

PSEG Power will not maintain a specific cash reserve or other segregated account to fund an extended (i.e., 6 month) shutdown. The intent in the application was to explain that PSEG Power would have the ability to fund such a shutdown given: 1) PSEG Power's proposed capitalization and assets; and 2) the expected revenue streams that will exist independent of a unit shutdown, from PSEG Power's diverse and extensive generating assets (fossil and nuclear). These financial structures should result in an investment grade debt rating for PSEG Power. This is not a case of the transfer of a single generating unit to a third party to operate as a merchant plant. PSEG Power will hold, in its subsidiaries, collectively, the generation capacity of the present utility, PSE&G.

Nuclear operating costs are shown in Appendix 9 (in the original LCR submittal) to the license transfer application. These operating costs are included in the financial projections for PSEG Power in Appendix 10. The operating costs in the case of an extended shutdown would be lower than these projections, because the costs would no longer include fuel costs and other non-fuel capital additions, as well as certain operations and maintenance costs.

The Income Statement and Cash Flow Projection in Appendix 10 assumes normal shutdowns, and also identifies the net external financing requirements for PSEG Power for five years. While there is no contingency for extended shutdowns included in the financial projections in Appendix 10, these projections show that PSEG Power expects to generate sufficient after tax cash flow from operations, which could be made available if needed to fund one or more extended shutdowns.

PSEG, as the power marketing entity within PSEG Power, will be the primary source of revenue. PSEG ERT's obligations to PSEG Nuclear are established by the power purchase agreement filed with FERC, as discussed above.

¹ As discussed below, these projections illustrate that PSEG Power will generate sufficient after tax cash flow from operations as shown in Appendix 10, which annually could be made available, if necessary, to fund an extended outage.

3. *The application states that PSEG Power will be established with "sufficient capitalization" to support at least a BBB credit rating. How much is sufficient capitalization?*

A BBB credit rating is a Standard & Poor's credit rating defining minimum investment grade. (Other ratings services have comparable credit ratings.) There is no one precise, quantitative criterion for the capitalization needed to establish a BBB (or any other) credit rating. Rather, the ratings services will evaluate a range of financial parameters, including capital requirements, capital structure, cash flow measurements of leverage, and financial or coverage ratios. With respect to capitalization, the analysis ordinarily would focus on the company's cash requirements and its ability to meet those requirements through internal versus external sources. A company's relative ability to meet cash capital requirements through internal cash generation is an indicator of financial strength. The ratio of funds from operations to total debt and the ratio of retained cash flow to total debt may also be considered.

As stated in the license transfer application, PSEG Power's intent is to establish at least a BBB investment grade credit rating. Capitalization will be established (or, more precisely, the necessary showing on the full range of financial parameters will be made) to meet that objective. Although the credit rating has not yet been established with the ratings services, based on financial projections similar to those provided in Appendix 10 of the application (particularly going forward cash flow and interest coverage) PSE&G has a reasonable expectation of the investment grade rating.

Decommissioning Funding Assurance

Public Service Electric and Gas Company (PSE&G) is proposing to hold the Decommissioning Trust Funds until Internal Revenue Service (IRS) tax issues are resolved.

1. *What is the plan if an adverse ruling (or no ruling) concerning the taxability of the funds being transferred is issued?*

As stated in the license transfer application, it is PSE&G's intent that the Nuclear Decommissioning Trust funds (NDTs) be transferred to PSEG Nuclear. Revenues from the Societal Benefits Charge (SBC) will be assigned to PSEG Nuclear. PSE&G is seeking a private letter ruling from the IRS to allow the transfer on a tax free basis. However, if there is no ruling on the issue by the time the company plans to close on the restructuring, PSE&G will hold the NDTs for a limited period pending resolution of the tax issue. If there is an adverse ruling, which PSE&G does not expect, PSE&G may also need to hold the funds for some time after closing while tax issues are evaluated. However, in any such event, PSE&G does not intend to remain an NRC licensee following completion of the restructuring and transfer of the plants to PSEG Nuclear.

Accordingly, consistent with the precedent of the Three Mile Island Unit 1 transfer (addressed in the NRC's Safety Evaluation Report of April 12, 1999), PSE&G acknowledges and voluntarily accepts that the NRC would retain jurisdiction over PSE&G's actions with respect to the funds for any interim or transitional period until the funds are transferred to PSEG Nuclear.

2. *The Stipulation Agreement with the BPU states that PSE&G will not be responsible for decommissioning after the transfer. If PSE&G is holding the decommissioning trust funds for some period of time, questions arise as to whether the U.S. Nuclear Regulatory Commission (NRC) would have authority over them. One option would be for PSE&G to remain on the license for decommissioning funding only. In the case of the Three Mile Island license transfer, GPU Energy had a statement in their application acknowledging and voluntarily accepting that the NRC would retain jurisdiction over GPU Energy's actions with respect to the fund, and declined to remain on the license. A license condition requiring modifications to the Trust Agreement was included in the amendment package. How would PSE&G like this issue to be handled?*

As discussed in answer to question 1 above, PSE&G will, at most, hold the NDTs after the license transfer and transfer of nuclear assets for a limited interim period. As discussed above, PSE&G does not intend to remain an NRC licensee and, instead, acknowledges and voluntarily accepts that the NRC would retain jurisdiction over PSE&G's actions with respect to the NDTs pending the transfer of the NDTs to PSEG Nuclear.

PSE&G has also reviewed the license condition included in the Three Mile Island Unit 1 transfer order, requiring certain modification to the Master Trust Agreement. These modifications provide for notification to the NRC prior to disbursement of funds from the trust, a prohibition against disbursement or payment if the trustee receives written notice of NRC objection, written consent by the NRC for material changes to the trust agreement, and reservation of the funds for the exclusive purpose of decommissioning the nuclear plants. The modifications also address certain investment restrictions.

PSE&G has no objection to a licensee condition in the transfer/amendment package of the same type as the Three Mile Island Unit 1 condition. However, PSE&G requests two clarifications regarding the applicability of the condition:

- First, the condition on the transfer consent should only apply and require modification of the Master Trust Agreements if and when the nuclear plants are transferred to PSEG Nuclear but the NDTs are held by PSE&G.
- Second, the licensee condition should specify that it no longer applies, and the restrictions in the Master Trust Agreements are no longer required, if and when the NDTs are transferred to PSEG Nuclear.

PSE&G also observes from the Three Mile Island Unit 1 Safety Evaluation Report that GPU Energy, because it would continue to hold the NDTs, was obligated by the NRC to pass the financial test specified under Appendix A to 10 C.F.R. Part 30. If PSE&G were subject to the test, it would pass by virtue of the following factors:

1. PSE&G has, and will have following the restructuring, an investment grade bond rating;
2. PSE&G has, and will have following the restructuring, tangible net worth at least six times the amount of the decommissioning funds being assured;
3. PSE&G has, and will have following the restructuring, assets located in the United States of at least 90% of its total assets.

**Draft Power Purchase Between
PSEG Energy Resources & Trade LLC and PSEG Nuclear LLC**

— DRAFT —

**POWER PURCHASE AGREEMENT
BETWEEN
PSEG ENERGY RESOURCES & TRADE LLC
AND
PSEG NUCLEAR LLC**

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("Agreement"), made and entered into as of this _____ day of _____, 1999 by and between PSEG Resources & Trade LLC ("ERT"), a limited liability company organized under the laws of the State of Delaware, and PSEG Nuclear LLC ("PSEG Nuclear"), a limited liability company organized under the laws of the State of Delaware, both subsidiaries of Public Service Enterprise Group, Inc.

WITNESSETH

WHEREAS, on April 21, 1999 the New Jersey Board of Public Utilities ("NJBPU") issued an order summarizing the terms of a final order to be issued ("NJBPU Order") requiring Public Service Electric and Gas Company ("PSE&G") to transfer all of its nuclear and fossil electric generating assets to a separate affiliated corporate entity or entities;

WHEREAS, in accordance with the NJBPU Order, PSE&G has transferred to PSEG Nuclear the electric generating units listed on Schedule 1 attached to this Agreement, which schedule is incorporated in this Agreement as if set forth herein;

WHEREAS, the NJBPU Order requires that, in order to ensure the reliability of supply for PSE&G's Basic Generation Service ("BGS") and to remove the risk of price volatility from PSE&G in providing such service, and to further ensure that PSE&G can meet its contractual obligations in its Off-Tariff Rate Agreements, PSE&G enter into a full requirements contract with an affiliate whereby the affiliate will provide capacity, energy and Ancillary Services on a requirements basis during the time period that PSE&G is acting as the BGS supplier in its service territory;

WHEREAS, in accordance with the NJBPU Order, PSE&G and ERT have entered into a Wholesale Power Contract pursuant to which ERT will provide capacity, energy, Ancillary Services and losses on a full requirements basis to PSE&G ("BGS Contract");

WHEREAS, ERT will sell capacity and energy and provide Ancillary Services to customers in addition to PSE&G;

WHEREAS, ERT desires to purchase from PSEG Nuclear capacity, energy and Ancillary Services in order to fulfill its obligations under the BGS Contract and any other power supply agreements it may have or enter into; and

WHEREAS, PSEG Nuclear is willing to sell capacity, energy and Ancillary Services exclusively to ERT subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions.

Terms capitalized for other than grammatical purposes and not otherwise defined in this Agreement shall have the following meanings.

"Agreement" has the meaning set forth in the first paragraph of this Power Purchase Agreement.

"Ancillary Services" means those of the ancillary services defined in the PJM OATT that can be provided by a Generating Unit owned by PSEG Nuclear consistent with Prudent Utility Practice.

"BGS" means Basic Generation Service, the retail generation service provided by PSE&G to its customers in New Jersey in accordance with the New Jersey Electric Discount and Energy Competition Act of 1999 and the NJBPU Order.

"BGS Contract" has the meaning set forth in the fourth recital clause of this Agreement.

"Commission" means the Federal Energy Regulatory Commission or any successor federal agency having regulatory jurisdiction over the Agreement.

"Effective Date" means the latest of (a) October 1, 1999, (b) the date on which all acceptances and approvals required for this Agreement to become effective have been obtained, or (c) the date this Agreement is executed by the Parties at closing.

"ERT" has the meaning set forth in the first paragraph of this Agreement.

"Generating Units" means the nuclear powered electric generating units listed in Schedule I attached to this Agreement, which Schedule is incorporated in this Agreement as if set forth herein, and **"Generating Unit"** means each such generating unit, individually.

"NJBPU" has the meaning set forth in the first recital clause of this Agreement.

"NJBPU Order" has the meaning set forth in the first recital clause of this Agreement.

"Off-Tariff Rate Agreements" means those agreements implemented by the NJBPU prior to the execution of this Agreement pursuant to which PSE&G provides electric service to specified customers.

"Operating Committee" has the meaning set forth in Section 12.17 of this Agreement.

"Parties" means ERT and PSEG Nuclear, collectively, and **"Party"** means ERT or PSEG Nuclear, individually.

"PJM" means PJM Interconnection, LLC, the independent system operator for the PJM control area organized and operating pursuant to the PJM Operating Agreement.

"PJM OATT" means the PJM Open Access Transmission Tariff administered by PJM, as such Tariff may be amended from time to time.

"PJM Operating Agreement" means the Amended and Restated Operating Agreement of PJM Interconnection, LLC, dated June 2, 1997 and effective January 1, 1998, as such agreement may be amended from time to time.

"Points of Delivery" means for each Generating Unit the point of interconnection between the facilities owned by PSEG Nuclear (and joint owners) and the transmission facilities of PSEG and others to which the Generating Unit is connected.

"Prudent Utility Practice" means any of the practices, methods, and acts required or approved by PJM acting pursuant to the PJM OATT or PJM Operating Agreement, or engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act, but rather to be a spectrum of acceptable practices, methods or acts.

"PSE&G" has the meaning set forth in the first recital clause of this Agreement.

"PSEG Nuclear" has the meaning set forth in the first paragraph of this Agreement.

"Stipulation" means the Stipulation dated March 17, 1999, among PSE&G, Enron Capital And Trade Resources, the Natural Resources Defense Council, the Independent Energy Producers of NJ, Tosco/Bayway, the International Brotherhood of Electrical Workers, Local 94, the New Jersey Transit Corporation and the New Jersey Commercial Users setting forth a retail choice plan for PSE&G, as modified and approved in the NJBPU Order.

"Transmission Service" or "Transmission" means the delivery of capacity, energy and Ancillary Services pursuant to the PJM OATT or pursuant to another open access transmission tariff or transmission agreement on file with the Commission.

1.2. Interpretation.

(a) Amendments Included. Reference to, and the definition of, any document (including this Agreement) shall be deemed a reference to such document as it may be amended, amended and restated, supplemented or modified from time to time;

(b) Successors Included. Reference to any individual, corporation or other entity shall be deemed a reference to such individual, corporation or other entity, together with its successors and permitted assigns from time to time;

(c) Articles, Sections, or Schedules. All references to an "Article," "Section" or "Schedule" are to an Article or Section hereof or to a Schedule attached hereto;

(d) Number and Gender. Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;

(e) Whole Agreement. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(f) Headings. The headings in this Agreement are for the purpose of reference only and do not limit or affect its meaning;

(g) Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this Agreement, they are not limiting and have the meaning as if followed by the words "without limitation."

2. TERM

2.1. **Term.** This Agreement shall become effective as of the Effective Date, and shall continue in effect until terminated by agreement of the Parties in writing.

3. PURCHASE AND SALE OF CAPACITY, ENERGY AND ANCILLARY SERVICES

3.1. **Capacity and Energy.** In accordance with the terms of this Agreement, PSEG Nuclear shall produce, sell and make available at the Points of Delivery, and ERT shall purchase and accept, on each day during the Term, all of the capacity available from the Generating Units and all of the energy generated by such capacity on such day, net of the requirements of the Generating Units.

3.2. **Electric Characteristics.** Energy delivered by PSEG Nuclear to ERT at the Points of Delivery shall be in the form of three-phase, sixty (60) Hertz, alternating current, with reasonable variation of frequency and voltage allowed consistent with Prudent Utility Practices.

3.3. **Ancillary Services.** As directed by ERT, PSEG Nuclear shall provide ERT any Ancillary Services that are available from the Generating Units.

3.4. **Points of Delivery.** PSEG Nuclear shall deliver energy and Ancillary Services from each Generating Unit, as scheduled for dispatch by ERT in accordance with Section 4.1 of this Agreement, at the Point(s) of Delivery for such Generating Unit. Title to, and responsibility for, energy and Ancillary Services shall pass from PSEG Nuclear to ERT at the Point(s) of Delivery.

3.5. **Transmission.** PSEG Nuclear shall be responsible for the transmission and delivery of energy and Ancillary Services to the Points of Delivery. ERT shall be responsible for arranging and paying for the Transmission of energy, and Ancillary Services from the Points of Delivery to the points at which ERT delivers energy and Ancillary Services to its customers.

4. DISPATCH AND SCHEDULING

4.1. **Dispatch.** Subject to Prudent Utility Practice, ERT shall have the sole discretion to request the commitment and dispatch of energy and Ancillary Services from each of the Generating Units. When ERT elects to schedule the dispatch of any Generating Unit, PSEG Nuclear shall do so up to the capacity available from the Generating Unit at the time, subject to Prudent Utility Practice. To the extent practicable, the dispatch of the Generating Units shall be in accordance with a dispatch plan developed mutually by the Operating Committee and designed to satisfy ERT's

requirements for energy and Ancillary Services. The dispatch plan shall include minimum notification requirements prior to implementing the dispatch of any Generating Unit and minimum dispatch levels for each Generating Unit, if any.

4.2. Communications Equipment. PSEG Nuclear shall acquire or lease, install and maintain the telecommunications equipment required for the dispatch of the Generating Units and coordination of activities by PSEG Nuclear and ERT.

5. OPERATION AND MAINTENANCE

5.1. Operation of Generating Units. PSEG Nuclear shall operate and maintain (including making necessary and appropriate repairs and replacements) the Generating Units over which it has operating responsibility in accordance with Prudent Utility Practice, Operating Committee approval and otherwise in accordance with this Agreement.

5.2. Annual Notice of Scheduled Maintenance Outages. Subject to the provisions of the PJM Operating Agreement, the Operating Committee shall develop annual schedules of expected maintenance outages of the Generating Units on a schedule that satisfies the planning and operating requirements of both Parties. The schedule shall include, for each Generating Unit, estimated times of operation, amounts of energy production, number of anticipated outages and reductions of output and the reasons therefor, and the start dates and duration of scheduled maintenance, including a specification of maintenance requiring shutdown or reduction in output of any Generating Unit. ERT may request PSEG Nuclear to revise its proposed schedule for the timing and duration of scheduled maintenance outages or reduction of output of any Generating Unit to accommodate the reasonable requirements of ERT. Subject to Prudent Utility Practice, PSEG Nuclear shall attempt to schedule maintenance consistent with satisfying ERT's reasonable requirements for energy and Ancillary Services from the Generating Units. PSEG Nuclear may change its maintenance schedule with respect to the timing and duration of any scheduled maintenance outage or reduction of output of any Generating Unit as required to satisfy Prudent Utility Practice.

5.3. Annual Maintenance and Inspection Report. Once each year, or on some other schedule agreed to by the Operating Committee, PSEG Nuclear shall prepare and submit to ERT a summary of all maintenance and inspection work performed in the prior calendar year and of all conditions experienced or observed during that calendar year that may have a material adverse affect on, or may materially impair the short or long-term operation of, any of the Generating Units.

5.4. Retirement. Notwithstanding any other provision of this Agreement, PSEG Nuclear shall have the right to determine that a Generating Unit should be retired from service. Following the date of such retirement, the Generating Unit shall no longer be subject to the provisions of this Agreement.

6. COMPENSATION, BILLING AND PAYMENT

6.1. Compensation. Each month, ERT shall reimburse PSEG Nuclear for all of the costs incurred by PSEG Nuclear in operating and maintaining the Generating Units, making available capacity, energy and Ancillary Services, complying with Nuclear Regulatory Commission requirements, and otherwise performing its obligations under this Agreement, except for such costs

borne by other owners of the Generating Units and to the extent of any funds advanced by PSEG Power LLC to reimburse PSEG Nuclear for such costs. The costs for which PSEG Nuclear shall be reimbursed by ERT hereunder shall not include any costs associated with decommissioning of the Generating Units.

6.2. Metering. All energy delivered by PSEG Nuclear to ERT from a Generating Unit under this Agreement shall be metered at meter installations provided, installed, owned, and maintained by PSEG Nuclear. Such metering shall be sufficient to satisfy any billing requirements under this Agreement and any metering, billing and settlement requirements of PJM and the retail competition rules of the NJBPU. PSEG Nuclear shall be responsible for reading and testing of meters and shall promptly correct any metering inaccuracy.

6.3. Billing. As soon as practicable after each month, PSEG Nuclear shall render a billing statement to ERT for the amounts due for such month. ERT shall pay the amount shown on the statement within seven (7) days after the date of the receipt of the statement. ERT shall make payments either by wire transfer or by other mutually agreeable method. In the event that ERT does not make payment by the due date set forth above, it shall be responsible for any interest or other costs or charges incurred by PSEG Nuclear as a result of ERT's delinquent payment.

6.4. Disputed Bills. ERT may, in good faith, challenge the correctness of any statement rendered under this Agreement no later than twelve (12) months after the date the statement was rendered. In the event a billing statement or portion thereof is challenged, ERT shall nevertheless pay the full amount of the statement when due, with notice of the objection given to PSEG Nuclear at that time. Any disagreement regarding disputed statement shall be resolved by the Operating Committee. If it is subsequently determined or agreed that an adjustment to the statement is appropriate, a revised statement shall be prepared by PSEG Nuclear. A statement rendered under the Agreement shall be binding on ERT twelve (12) months after the statement is rendered, except to the extent of any specific challenge to the statement made by that time.

6.5. Billing Adjustments. PSEG Nuclear shall have the right to adjust any statement rendered under the Agreement for any errors in arithmetic, computation, estimating, or otherwise no later than twelve (12) months after the date the statement was rendered. A billing adjustment shall constitute a new statement for the purposes of this Section. A statement rendered under the Agreement shall be binding on PSEG Nuclear twelve (12) months after the statement is rendered, except to the extent of any specific adjustment to the bill made by PSEG Nuclear prior to such time.

7. PSEG NUCLEAR SUPPORT OBLIGATIONS

7.1. PSEG Nuclear Support Obligations: The Parties recognize that, in accordance with Section 21(c) of the Stipulation, PSE&G has designated ERT to serve as PSE&G's sole agent for purposes of scheduling, electing and/or using all rights, including fixed transmission rights associated with the provision of service under the BGS Contract. PSEG Nuclear shall provide such support, as may be reasonably requested by ERT, in order to enable ERT to perform such obligations.

7.2. Environmental Obligations. PSEG Nuclear shall maintain and provide to ERT such records relating to environmental matters as are required by state and federal laws and

regulations that require either Party to specify an environmental mix of power or to disclose the sources of power used to supply capacity and energy during the Term.

8. CHANGES

8.1. Changes. This Agreement shall be changed solely by written amendment executed by both Parties. It is the intent of the Parties that this Agreement shall not be subject to change pursuant to Section 206 of the Federal Power Act except where the Commission determines pursuant to Section 206 that such change is required by the public interest.

9. LIABILITY AND INDEMNIFICATION

9.1. Limitation of Liability. For breach of any provision for which an express remedy or measure of damages is provided in this Agreement, the liability of the defaulting party shall be limited as set forth in such provision, and all other damages or remedies are hereby waived. If no remedy or measure of damages is expressly provided, the liability of the defaulting party shall be limited to direct damages only and all other damages and remedies are hereby waived. In no event shall either party be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages in tort, for contract or otherwise.

9.2. Liability of PSEG Nuclear. PSEG Nuclear shall be liable for all damages, losses, claims, demands, suits, judgments, recoveries, costs and expenses (including court costs and reasonable attorneys' fees) resulting from the operation and maintenance of the Generating Units, storage and handling of fuel and/or from PSEG Nuclear's failure to perform its obligations under this Agreement. PSEG Nuclear shall indemnify and save harmless ERT and its officers, directors, employees, agents or representatives from any such damages, losses, claims, demands, suits, judgments, recoveries, costs and expenses, except to the extent that any such damages, losses, claims, demands, suits, judgments, recoveries, costs and expenses result in whole or in part from the gross negligence or willful misconduct of ERT or its officers, directors, employees, agents or representatives.

9.3. Liability of ERT. ERT shall be liable for all damages, losses, claims, demands, suits, judgments, recoveries, costs and expenses (including court costs and reasonable attorneys' fees) resulting from ERT's failure to perform its obligations under this Agreement. ERT shall indemnify and save harmless PSEG Nuclear and its officers, directors, employees, agents or representatives from any such damages, losses, claims, demands, suits, judgments, recoveries, costs and expenses, except to the extent that any such damages, losses, claims, demands, suits, judgments, recoveries, costs and expenses result in whole or in part from the gross negligence or willful misconduct of PSEG Nuclear or its officers, directors, employees, agents or representatives.

10. FORCE MAJEURE

10.1. Force Majeure Defined. As used in this Agreement, "Force Majeure" means any cause beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure. It shall include, without limitation, sabotage, strikes or other labor difficulties, riots or civil disturbance, acts of God, act of public enemy, drought, earthquake, flood, explosion, fire, lightning, landslide, or similarly cataclysmic occurrence, or appropriation or diversion of electricity by sale or binding order of any court or governmental authority having jurisdiction thereof, or any

other cause, whether of the kind herein enumerated, or otherwise, not within the control of the Party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Interruption of Transmission Service is not a Force Majeure event unless the Party contracting with the transmission service provider has arranged for firm transmission service, as defined in the transmission service provider's tariff, of the capacity, energy or Ancillary Services scheduled under this Agreement and the transmission service provider is relieved of liability for an interruption of such firm transmission service.

10.2. Effect of Force Majeure. If either Party to this Agreement is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure as defined above, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

(i) the non-performing Party promptly, but in no case longer than three (3) business days after the occurrence of the Force Majeure, gives the other Party written notice describing the particulars of the occurrence;

(ii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and

(iii) the non-performing Party used due diligence to remedy its inability to perform.

Neither Party to this Agreement will be required by the foregoing to settle a strike affecting it except when, according to its best judgment, such a settlement seems advisable. Nothing in this Section will excuse ERT from making payment for capacity, energy and/or Ancillary Services under this Agreement.

11. MISCELLANEOUS

11.1. Withdrawal. If the Commission, or any court or agency having jurisdiction over this Agreement, finds any term or condition to be unjust, unreasonable, otherwise unlawful, or incompatible with regulatory policy, ERT and PSEG Nuclear shall mutually withdraw all or any portion of this Agreement and enter into negotiations of such changes as are required to conform to the requirements of law; provided that the Parties may choose to terminate this Agreement if the Commission, or any court or agency having jurisdiction over this Agreement requires a change hereto that either Party deems to be unacceptable.

11.2. Assignment. Neither Party shall assign this Agreement or any part thereof without the prior written consent of the other Party (which such consent shall not be unreasonably withheld), except that either Party may assign this Agreement without the consent of the other Party to an affiliate or to any company which shall succeed by purchase, merger or consolidation to all or substantially all of the electric properties of PSEG Nuclear or ERT. Any Party's transfer or assignment in violation of this section shall be void.

11.3. Applicable Laws, Regulations, Orders, Approvals, and Permits. This Agreement is made subject to all existing or future applicable federal, state, and local laws and to all existing or future duly promulgated orders or other duly authorized actions of governmental authorities having jurisdiction over the matters contained in this Agreement. PSEG Nuclear's obligation to provide

capacity, energy and Ancillary Services is subject to the condition that all requisite governmental and regulatory approvals for the provision of such service will have been obtained.

11.4. Accounts and Records. PSEG Nuclear shall maintain such records of its operations under this Agreement as shall be required for ERT's reasonable business purposes and to satisfy its contractual requirements to others. Any disagreements regarding the records to be retained by PSEG Nuclear hereunder shall be resolved by the Operating Committee. ERT shall have the right promptly to obtain copies of all records maintained in accordance with this provision. Any information obtained by ERT hereunder shall be subject to the confidentiality provisions of Section 11.8 of this Agreement.

11.5. Choice of Law and Jurisdiction. The interpretation and performance of this Agreement shall be in accordance with the laws of the State of New Jersey, excluding conflicts of law principles that would require the application of the laws of a different jurisdiction. Any dispute arising out of or related to this Agreement shall be litigated in a court of the State of New Jersey or the federal courts located in Newark, New Jersey. Each Party expressly submits to the jurisdiction of the Courts of the State of New Jersey, and the federal courts situated in Newark, New Jersey and to service of process by certified mail.

11.6. Counterparts to this Agreement. This Agreement may be executed in any number of counterparts each of which shall be an original, but all of which together shall constitute one and the same instrument.

11.7. Notices. Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be in writing and shall be delivered in person, by certified mail (postage prepaid, return receipt requested) or by nationally recognized overnight courier (charges prepaid), in each case properly addressed to such Party as shown below:

If to ERT, to:

Manager - Electric Trading Operations
PSEG Energy Resources & Trade LLC
80 Park Plaza
Newark, New Jersey 07107

If to PSEG Nuclear, to:

Manager - Contracts
PSEG Nuclear LLC
80 Park Plaza
Newark, New Jersey 07107

Either Party may from time to time change its address for the purpose of notices or other communications to that Party by a similar notice specifying a new address, but no such change shall be effective until it is actually received by the Party sought to be charged with its contents. All notices and other communications required or permitted under this Agreement that are addressed as provided in this Section shall be deemed to have been given (i) upon delivery if given by overnight

courier, hand delivery or certified mail or (ii) upon automatically generated confirmation if given by facsimile.

11.8. Confidentiality. Each Party agrees that it will treat in strictest confidence all documents, materials and other information marked "Confidential" or "Proprietary" by the disclosing Party ("Confidential Information") which it shall have obtained regarding the other Party during the course of the negotiations leading to, and its performance of, this Agreement (whether obtained before or after the date of this Agreement). Confidential Information shall not be communicated to any third person by a Party (other than to its affiliates, counsel, accountants, financial or tax advisors, or insurance consultants or in connection with its financing); *provided* that in the event the receiving Party is required by law, regulation or court order to disclose any Confidential Information, the receiving Party will promptly notify the disclosing Party in writing prior to making any such disclosure in order to facilitate the disclosing Party's seeking a protective order or other appropriate remedy from the proper authority and further *provided* that the receiving Party further agrees that if the disclosing Party ultimately discloses such Confidential Information to the requesting legal body, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information. The obligations of nondisclosure and restricted use of Confidential Information shall survive the expiration or other termination of this Agreement until such obligations expire in accordance with their respective terms.

11.9. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. In the event that such a construction would be unreasonable or would deprive a Party of a material benefit under this Agreement, the Parties shall seek to amend this Agreement to remove the invalid provision and otherwise provide the benefit unless prohibited by law.

11.10. Waivers. The failure of either Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

11.11. Entire Agreement and Amendments. This Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties hereto or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties and accepted or approved by the Commission.

11.12. No Third-Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any

persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either Party, nor to give any third persons any right of subrogation or action against either Party.

11.13. Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party will execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

11.14. Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

12. OPERATING COMMITTEE.

(a) The Parties agree to establish an Operating Committee consisting of one (1) representative of each Party. The Operating Committee shall act only by unanimous agreement or consent. Each Party shall designate its respective representative to the Operating Committee, plus an alternate, by written notice delivered in accordance with Section 11.7. Each Party's representative on the Operating Committee is authorized to act on behalf of such Party with respect to any matter arising under this Agreement.

(b) The Operating Committee shall develop and implement suitable operating, maintenance, outage and capability reporting, accounting, and recordkeeping policies and procedures to coordinate and facilitate the activities of the Parties with respect to the performance of their duties and obligations hereunder. The Operating Committee shall not, however, have any authority to modify or otherwise alter the rights and obligations of the Parties under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth at the beginning of this Agreement.

PSEG NUCLEAR LLC

By _____
Name:
Title:

PSEG ENERGY RESOURCES & TRADE LLC

By _____
Name:
Title:

SCHEDULE 1
Generating Units

Nuclear

Hope Creek
Salem 1
Salem 2
Peach Bottom 2
Peach Bottom 3