

ENERGY CONSULTANT AGREEMENT

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ENERGY CONSULTANT AGREEMENT

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THIS AGREEMENT is made and entered into this _____ day of _____, 19___, by and between Public Service Electric and Gas Company (the “Company”), a corporation and a public utility organized and existing under the laws of the State of New Jersey and _____, a _____ organized and existing under the laws of _____ (“Energy Consultant”), both the Company and the Energy Consultant hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

WITNESSETH :

WHEREAS, the Company is currently a public utility engaged in the production, transmission, distribution and sale of electric energy with an exclusive franchise to serve Customers located within certain areas of the State of New Jersey; and

WHEREAS, certain federal and New Jersey Statutes and administrative Rules and Regulations govern the electric utility industry in New Jersey (generally, the “Applicable Legal Authorities”); and

WHEREAS, certain of the Applicable Legal Authorities provide for the restructuring of the electric industry in New Jersey from that of a regulated public utility service to allow access to the electric public utility’s local distribution system by entities that have successfully completed the licensing process set forth in the Applicable Legal Authorities; and

WHEREAS, the Applicable Legal Authorities provide that with implementation of such access to the Company’s local distribution system, the Company will continue to serve as the exclusive electric distribution provider within its Service Territory; and

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WHEREAS, in accordance with the Applicable Legal Authorities, Customers may purchase retail electricity or electric related services from licensed Suppliers; and

WHEREAS, the Applicable Legal Authorities provide that Energy Agents, as defined therein, must successfully complete a registration process as set forth therein; and

WHEREAS, the New Jersey Board of Public Utilities (“Board”) has determined that Energy Consultants, as defined in this Agreement, must also be registered in accordance with such process; and

WHEREAS, Energy Consultant desires the opportunity to provide advice to Customers for the purchase of retail electricity or electric related services from licensed Suppliers; and

WHEREAS, an agreement between the Company and Energy Consultant is needed in order for Energy Consultant to obtain access to customer historical usage data in electronic format from the Company; and

WHEREAS, the Board has approved the form of this Agreement for the Company’s use with Energy Consultant; and

WHEREAS, Energy Consultant has duly executed this Agreement and submitted it to the Company to request that the Company execute and thereby enter into this Agreement with Energy Consultant; and

WHEREAS, Energy Consultant represents that it is duly registered with the BPU, and that it has been assigned BPU Registration No. _____; and

WHEREAS, in reliance upon such representation, Company hereby grants Energy Consultant access to customer historical usage data, subject to the terms and conditions hereof.

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NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

ARTICLE 1: DEFINITIONS

Board or “BPU” - the New Jersey Board of Public Utilities.

Business Day - any day on which the Company’s corporate offices are open for business.

Data Exchange & Protocol Working Group - designation for a specific subgroup of the Customer Processes Working Group, existing in New Jersey in 1998 and 1999 at the initiative of the Board, or its successor.

Energy Agent - a person that is duly registered pursuant to the provisions set forth in the Applicable Legal Authorities, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between governmental aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electricity or gas sold.

Energy Consultant - a person that is duly registered pursuant to the provisions set forth in the Applicable Legal Authorities, and that provides independent advice to Customers for the purchase of retail electricity or electric related services from Suppliers. An Energy Consultant shall be the agent of the Customer, government aggregator or private aggregator.

Government aggregator - any government entity that enters into a written contract with a licensed Supplier for: (1) the provision of electric generation service or electric related service for its own use or the use of other government aggregators; or (2) if a municipal or county government, the provision of electric generation service on behalf of business or residential customers within its territorial jurisdiction;

Interval Metering - metering that is capable of reading and storing electric consumption data at discrete time intervals of one hour or less to enable the measurement of energy and demand as may be required by the Company’s Tariff for Electric Service.

Private aggregator - a non-government aggregator that is a duly organized business or non-profit organization authorized to do business in the State of New Jersey that enters into a contract with a duly licensed Supplier for the purchase of electric energy and capacity on behalf of multiple end-use customers by combining the loads of those customers.

Service Territory - the geographic areas of the State of New Jersey in which the Company has an exclusive franchise to serve electric Customers.

Supplier - an entity that has been licensed by the Board to sell energy to retail customers within the State of New Jersey in accordance with the Applicable Legal Authorities and has entered into a Third Party Supplier Agreement with Company as a Party.

ARTICLE 2: GENERAL TERMS AND CONDITIONS

2.1 Agreement to Govern

The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which the Company shall provide to Energy Consultant access to customer usage data in electronic format.

2.2 Conditions Precedent to Company Execution of Agreement

Before the Company executes this Agreement, the Energy Consultant must fulfill the following requirements: (a) register with the Board in accordance with the Applicable Legal Authorities and BPU procedures; and (b) demonstrate to the Company's satisfaction that the Energy Consultant is equipped with the communication capabilities necessary to comply with Electronic Data Interchange ("EDI") standards for the exchange of information allowed under this Agreement, including requests for customer historical usage data, which are set by the Board and may from time to time be modified by the Board, either directly or through a Working Group.

2.3 Communications and Data Exchange

Electronic information exchange between the Energy Consultant and the Company under this Agreement shall employ an identification number, assigned by the Company.

The Energy Consultant must be equipped with the communications capabilities necessary to comply with the standards that are set by and may, from time to time, be modified by the Board, either directly or through a Working Group. The Energy Consultant must have in place,

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and must bear the costs of putting in place and successfully testing, all required information technology systems that will enable it to send and receive data to and from the Company.

The Company shall make available information regarding Customers, as prescribed by, and pursuant to, the Board-approved recommendations of the Data Exchange & Protocol Working Group.

2.4 Year 2000

The Energy Consultant represents that it is, and will remain, in conformity with the Company's Year 2000 standards. As such, it has executed the Company's form Statement of Year 2000 Readiness, which is attached hereto as Appendix A. The Parties agree that any computer problems the Energy Consultant may experience, including any failure of Year 2000 safeguards, shall not constitute a Force Majeure event under this Agreement.

2.5 Tariff Incorporated

The Company's Tariff for Electric Service, as filed with the Board, including the Standard Terms and Conditions, is incorporated herein by reference.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 Energy Consultant's Representations and Warranties

The Energy Consultant hereby represents, warrants and covenants as follows:

- (a) the Energy Consultant is a [corporation/partnership/_____] duly organized and validly existing under the laws of the State of New Jersey [or, if another jurisdiction, is duly registered and authorized to do business and is in good standing in the State of New Jersey];

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- (b) the Energy Consultant has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including Board registration, which shall be maintained throughout the life of this Agreement, and the lack of which shall immediately result in the termination of this Agreement;
- (c) the execution and delivery of this Agreement and the performance of the Energy Consultant's obligations hereunder have been duly authorized by all necessary action on the part of the Energy Consultant;
- (d) this Agreement is the valid and binding obligation of the Energy Consultant, enforceable in accordance with its terms;
- (e) there are no actions at law, suits in equity, proceedings or claims pending or, to the Energy Consultant's knowledge, threatened against the Energy Consultant before any federal, state, foreign or local court, tribunal or government agency or authority that might materially delay, prevent or hinder the Energy Consultant's performance of its obligations hereunder;
- (g) the Energy Consultant will comply with any and all information and data transfer protocols that may be adopted by the Company that are set by, and from time to time modified by, the Board. The Energy Consultant will comply with any and all information and data transfer protocols that may be adopted by the Company from time to time, unless the Energy Consultant exercises its reserved right to challenge any such protocols in the appropriate forum.

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If the Energy Consultant learns that any of the representations, warranties, or covenants in this Agreement have been violated, the Energy Consultant shall immediately notify the Company via facsimile, with a hard copy of the notice delivered by overnight mail.

3.2 Company's Representations and Warranties

The Company hereby represents, warrants and covenants as follows:

- (a) the Company is an electric utility corporation duly organized and validly existing under the laws of the State of New Jersey;
- (b) the Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;
- (c) the execution and delivery of this Agreement and the performance of the Company's obligations hereunder have been duly authorized by all necessary action on the part of the Company; and
- (d) this Agreement is the valid and binding obligation of the Company, enforceable in accordance with its terms.

3.3 Survival of Obligations, Notice of Violation

All representations and warranties contained in this Article shall survive the execution of this Agreement.

ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT

4.1 Commencement

The term of this Agreement shall commence on the date of execution by both Parties (the "Effective Date").

4.2 Termination

This Agreement may be terminated by Energy Consultant upon the provision of ten (10) days prior written notice to the Company. Moreover, upon the occurrence of an Event of Default by the Energy Consultant as defined in Article 5 below, the Company may terminate this Agreement by providing written notice to the Energy Consultant in Default, without prejudice to any other remedies at law or in equity available to the Company by reason of the Default.

4.3 Survival of Obligations

Termination of this Agreement for any reason shall not relieve the Company or the Energy Consultant of any obligation accrued or accruing prior to such termination.

4.4 Material and Adverse Change in Law or Regulation

If at any time during the term of this Agreement, Board, another New Jersey State agency, or a court of competent jurisdiction issues an order, or a State law or regulation is enacted, by which a Party hereto believes that its rights and interests under the Agreement are materially and adversely affected, the Party so affected shall, within thirty (30) days of issuance or enactment of such order, law or regulation, provide the other Party with written notice setting forth in reasonable detail how such order, law or regulation has materially and adversely affected its rights and interests under the Agreement, and may terminate this Agreement, subject to any applicable regulatory requirements and after providing thirty (30) days prior written notice to the Board and the other Party, without any liability or responsibility whatsoever except for obligations arising prior to the date of termination.

ARTICLE 5: BREACH AND DEFAULT

5.1 Events of Default

An event of Default under this Agreement shall occur if either Party ("Defaulting Party") (a) is the subject of a bankruptcy, insolvency or similar proceeding; (b) makes an assignment for the benefit of its creditors; (c) applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets; (d) violates any material federal, state or local code, regulation and/or statute applicable to the supply of energy, including by way of the failure to maintain BPU registration status, or failure to maintain any other governmental approvals required for participation in the New Jersey retail energy market; or (e) fails to pay the other party ("Non-Defaulting Party") when payment is due and fails to remedy the non-payment within ten (10) Business Days of receipt of written notice thereof from the Non-Defaulting Party, or fails to satisfy any other material obligation under this Agreement, such as maintaining confidentiality of Customer data. Should the Energy Consultant's BPU registration or any other governmental approval required for participation in the New Jersey retail energy market be revoked or forfeited, the Energy Consultant shall (i) immediately provide written notice to Company of such occurrence; and (ii) make no further requests to Company for access to customer usage data. Moreover, upon such revocation or forfeiture, the Energy Consultant will immediately be in default of this Agreement.

5.2 Rights Upon Default

Upon the occurrence of an Event of Default, the Non-Defaulting Party shall be entitled to (a) pursue any and all available legal and equitable remedies; and (b) terminate this Agreement without any liability or responsibility whatsoever except for obligations arising prior to the date

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of termination, by written notice to the Defaulting Party, subject to any applicable regulatory requirements.

ARTICLE 6: BILLING AND PAYMENT

6.1 Energy Consultant shall be responsible for the payment to the Company of the fees set forth in Appendix B, attached hereto and expressly made a part hereof. Payment shall be made in accordance with the following provisions:

(a) **Billing Procedure:** Each Month, the Company shall submit an invoice to the Energy Consultant for all amounts owed under this Agreement. The Energy Consultant shall make payment on or before the due date shown on the invoice. The due date shall be determined by the Company and shall not be less than fifteen (15) days from the date of transmittal of the invoice.

(b) **Manner of Payment:** The Energy Consultant shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(c) **Billing Disputes:** If the Company does not receive written notification from the Energy Consultant of an objection to an invoice within twenty (20) days from the due date of the invoice in question, said invoice shall be deemed conclusive and binding on the Energy Consultant. If a good faith dispute arises between the Company and the Energy Consultant regarding an invoice, the Energy Consultant shall pay only the undisputed portion of the invoice, if any, and shall present the dispute in writing and submit supporting documentation to the Company within twenty (20) days from the due date of the invoice in question. Billing disputes

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shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 8.

(d) Late Fee for Unpaid Balances: If payment is made to the Company after the due date shown on the invoice, a late fee will be added to the unpaid balance until the entire invoice is paid. This late fee will be 1.5% per calendar month on the unpaid balance.

ARTICLE 7: CONFIDENTIALITY OF INFORMATION

7.1 Customer-Specific Information

The Energy Consultant shall keep all Customer-specific information supplied by the Company confidential unless the Energy Consultant has the Customer's written authorization to do otherwise, and shall otherwise comply with all requirements contained in the Applicable Legal Authorities, including the Board's Final Interim Consumer Protection Standards.

7.2 Company Information

All Company information available to the Energy Consultant during the term of this Agreement regarding the Company, computer systems, or communications systems shall not be disclosed to third parties without obtaining the prior written consent of the Company.

ARTICLE 8: DISPUTE RESOLUTION

8.1 Informal Resolution of Disputes

The Company and the Energy Consultant shall use good faith and commercially reasonable efforts to informally resolve all disputes arising out of the implementation of this Agreement. The Energy Consultant's point of contact for all information, operations, questions

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and problems shall be the Company's Retail Settlement Operations Unit and the Company Website. Any dispute between the Company and the Energy Consultant under this Agreement may be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable.

8.2 Recourse to Agencies or Courts of Competent Jurisdiction

Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the Board under relevant provisions of the Applicable Legal Authorities, with a New Jersey State court of competent jurisdiction, or with a federal court of competent jurisdiction situated in the State of New Jersey.

ARTICLE 9: FORCE MAJEURE

The Company and the Energy Consultant shall use due diligence to perform their respective obligations under this Agreement. However, in the event that either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of an event of Force Majeure which by the exercise of due diligence and foresight the Party could not reasonably have been expected to avoid and which by the exercise of due diligence the Party is unable to overcome, such Party shall not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from or arising out of such delay or prevention; provided, however, that the Party encountering such delay or prevention shall give the other Party prompt notice thereof and shall use due diligence to remove the cause or causes thereof. Events of Force Majeure include a catastrophic weather condition, flood, fire, lightning, epidemic, quarantine, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, or restraint by court order or public authority, action or non-action by or inability to obtain authorization or approval from any governmental or other authority. The settlement of strikes and labor disturbances shall be wholly within the sole discretion of the Party experiencing that difficulty. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement.

ARTICLE 10: REGULATORY AUTHORIZATIONS AND JURISDICTION

10.1 Compliance With Applicable Legal Authorities

The Company and the Energy Consultant are subject to, and shall comply with, all existing or future applicable federal, State and local laws, and with all existing or future duly-promulgated orders or other duly-authorized actions of governmental authorities having applicable jurisdiction. The Company will not violate, directly or indirectly, or become a Party to a violation of any requirement of any applicable federal, State or local statute, regulation, rule or order in order to provide service under this Agreement to the Energy Consultant. The Company's obligation to provide service hereunder is subject to the condition that all requisite governmental and regulatory approvals for the provision of such service will have been obtained and will be maintained in force during such period of service.

10.2 Change in Applicable Legal Authorities

This Agreement is subject to change in the future to reflect any relevant changes required by the Board or other New Jersey State agency having jurisdiction, or by virtue of any federal or State law or regulation, and such changes shall be deemed to be binding upon the Parties, except where the right to terminate is exercised in accordance with Article 4 herein.

ARTICLE 11: LIMITATION OF LIABILITY AND INDEMNIFICATION

11.1 No Liability To Customers

This Agreement does not create any duty or liability to Customers for the errors or omissions of the Company or the Energy Consultant.

11.2 Liability Between Company and Energy Consultant

With respect to any actions performed pursuant to this Agreement, the Company shall have no liability to the Energy Consultant for the former's own negligence. The Energy Consultant, however, shall be liable to the Company should the former negligently fail to satisfy any of its obligations under this Agreement.

11.3 Indemnification

The Energy Consultant shall defend, indemnify and hold harmless the Company from and against any and all claims and/or liabilities for losses, expenses or any other liability incurred by the Company, including reasonable attorney's fees, relating to or arising out of any action taken by the Company with respect to the release or transfer of Customer data under this Agreement to Energy Consultant.

11.4 Survives Agreement

The obligation of Energy Consultant to defend, indemnify, and hold harmless the Company under this Article shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable under any statutory scheme, including any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

ARTICLE 12: MISCELLANEOUS PROVISIONS

12.1 Notices

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the Consultant to:

If to the Company to:

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day.

12.2 No Prejudice of Rights

The failure of either Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

12.3 Assignment

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Neither Party shall assign any of its rights or obligations under this Agreement without obtaining (a) any necessary regulatory approval(s); and (b) the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void. However, the Company may assign any or all of its rights and obligations under this Agreement, without the Energy Consultant's consent, to any entity succeeding to all or substantially all of the assets of the Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and if any necessary regulatory approvals are obtained.

12.4 Governing Law

Questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement shall be governed by the laws of the State of New Jersey, without regard to principles of conflicts of law. Any lawsuit arising in connection with this Agreement shall be brought in the state or federal courts of New Jersey.

12.5 Headings

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

12.6 Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

12.7 General Miscellaneous Provisions

a. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

b. Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

c. Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties.

d. Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto.

12.8 Use of the Word "Including"

The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to

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similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.

12.9 Amendment

This Agreement, including the appendices hereto, cannot be amended without the approval of the Board, and requests for such approval can be initiated only upon written notice to all Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

[ENERGY CONSULTANT]

ATTEST:

BY: _____
Title

Secretary

PUBLIC SERVICE ELECTRIC AND GAS
COMPANY

ATTEST:

BY: _____
Title

Secretary

APPENDIX A

SCHEDULE OF FEES TO BE CHARGED TO ENERGY CONSULTANTS

1. General Energy Consultant Administrative Fee: \$1000. per year. This represents recovery of costs incurred by the Company, and not recovered through any other fees or charges, in the course of rendering necessary support and assistance to Energy Consultants.
- 2 . One time interval data request: one time electronic report of annual 15-minute interval usage. Service fee: \$40. per account.

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