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PSEG

March 28, 2011

Via E-Mail: rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: Securities and Exchange Commission File No. S-7-18-08; Release No. 33-9186; 34-63874

Dear Ms. Murphy:

Public Service Enterprise Group Incorporated (PSEG) is pleased to have the opportunity to offer comments to the Securities and Exchange Commission (Commission) on the proposed amendments to the eligibility requirements for Form S-3 set forth in the above-referenced Releases. We believe that whatever the merits of eliminating credit ratings as one of those criteria for eligibility, the tests proposed in the Releases are inadequate to assure that we and our two principal subsidiaries will be able to continue to take advantage of the most efficient financing techniques now available to us under the current rules. We concur with the comments being submitted by the Edison Electric Institute (EEI) on behalf of the electric utility industry in general, as well as with those submitted by the Securities Industry and Financial Markets Association (SIFMA). While the EEI and SIFMA letters address issues more broadly applicable to a variety of issuers, we wish to make several points with respect to the anticipated impact of the proposal on our company in particular and others similarly situated.

As currently drafted, we are concerned that there is a strong likelihood that the proposed rules could preclude us from efficiently raising capital at lowest obtainable cost, consistent with contemporary financing strategies and techniques but without appreciably adding to investor protection. This result could place us at a competitive disadvantage and negatively affect our investors and customers. Such an impact would be incompatible with the Commission's admirable response over more than three decades to the evolution of capital markets through the adaptation of its regulatory oversight. Indeed, the very purpose of the shelf registration process was to provide a mechanism for rapid access to the capital markets. The proposed rules would have the effect of contradicting the Commission's own efforts, through its other rulemaking, to promote fluid, transparent capital-raising. We note that other issuers who have historically benefitted from the use of Form S-3 and shelf registrations would be impacted as well.

This is especially likely to be the case not just in our industry, but for any others in which a holding company structure is common.

We believe that alternatives are available that will achieve the Commission's goals as stated in the Releases in respect of the Dodd Frank Wall Street Reform and Consumer Protection Act, without sacrificing investor protection or the smoothly and efficiently functioning capital markets that are essential to our economy. As explained more fully below, we offer the following three alternatives for Form S-3 eligibility:

- a "debt float" test;
- a "subsidiary/parent" test; and
- a modified "recent issuance" test.

PSEG

PSEG is an energy holding company with a diversified business mix. We operate through two principal direct wholly-owned subsidiaries, PSEG Power LLC (Power) and Public Service Electric and Gas Company (PSE&G). Power is a wholesale energy supply company that integrates its generating asset operations with its wholesale energy, fuel supply, energy trading and marketing activities. PSE&G is a public utility company which provides transmission and distribution of electric energy and gas in a large part of New Jersey and implements demand response and energy efficiency programs throughout this service territory and invests in solar generation in the State. At December 31, 2010, both Power and PSE&G were "significant subsidiaries" as defined in Regulation S-X. Power and PSE&G comprised approximately 34% and 56% of the total assets and 73% and 23% of income from continuing operations (before income taxes, extraordinary items and cumulative effect of change in accounting principle) of PSEG.

PSEG has publicly-held equity securities, Power and PSE&G each have publicly-held debt securities, and each of them is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (Exchange Act). At December 31, 2010, PSEG had approximately 506 million shares of Common Stock outstanding with a market value of over $15 billion. Power had $3.26 billion outstanding of publicly-held Senior Notes subject to Exchange Act reporting. It also had outstanding $208 million of tax-exempt Senior Notes issued through conduit financings by governmental authorities exempt from registration under the Securities Act of 1933, as amended (Securities Act). PSE&G had outstanding $3.95 billion of publicly-held First and Refunding Mortgage Bonds (Mortgage Bonds) and secured Medium-Term Notes (MTNs) subject to Exchange Act reporting. It also had outstanding $337 million of tax-exempt Mortgage Bonds issued through conduit financings by governmental authorities exempt from Securities Act registration.

Power's and PSE&G's tax-exempt financings, although not subject to Securities Act registration, were issued in transactions utilizing offering memoranda which provided substantially similar disclosure as would be included in a Securities Act prospectus, including the incorporation by reference of Exchange Act periodic reports. These financings also contain covenants to provide debtholders with Exchange Act periodic reports.

Each of PSEG and PSE&G is a "well-known seasoned issuer" under Rule 405 of the Securities Act. PSEG is a "large accelerated filer" under the applicable rules of the Exchange Act. Each of PSEG, Power and PSE&G has a currently effective "shelf" Registration Statement on Form S-3 filed with the Commission. PSEG, Power and PSE&G have investment grade credit ratings on their respective debt and each is widely followed in the market by investors and analysts.

<u>Form S-3</u>
The availability of Form S-3 and the shelf registration process under Rule 415 have traditionally provided PSEG, Power and PSE&G with considerable flexibility in accessing the capital markets. In particular, in recent years PSE&G has engaged in a secured Medium-Term Note (MTN) program and has issued its MTNs and its First and Refunding Mortgage Bonds on an opportunistic basis to take advantage of the most favorable market conditions available from time to time. Power has at times issued its Senior Notes in accordance with the provisions of Rule 144A under the Securities Act, typically with registration rights providing for the subsequent exchange offer for registered securities utilizing Form S-4.

This flexibility in our ability to raise capital is especially significant in light of volatile conditions that often impact the capital markets, thereby allowing us to select the most advantageous times to issue securities consistent with evolving business plans. Capital needs are adjusted to reflect, among other things, regulatory and operating developments, including cash flows and required expenditures. These may be impacted by asset sales, customer collections, tax liabilities, depreciation (such as "bonus" depreciation under the Tax Relief Act of 2010) and related factors, not always expected, which, in turn, affect not just the projected amounts but the timing of securities offerings.

For example, Power may seek to respond to development opportunities announced from time to time or to take advantage of asset acquisition possibilities that may arise. It also may need to make investments in accordance with environmental and other regulatory requirements. Furthermore, adequate liquidity is essential to Power's energy marketing and trading strategy and operations. Power benefits from the greater certainty it has regarding its ability to speedily and easily finance new projects and ventures when necessary or advisable at the lowest obtainable cost. Such considerations are an important part of our ability to successfully implement our business plans. PSE&G may find it necessary to invest in new or enhanced infrastructure to satisfy safety or reliability mandates of regulators. Here too, cost is a major factor for us as well as for our regulators and customers. We believe that other issuers face similar market, regulatory and operational fluctuations and uncertainties, so that convenient, cost-effective capital access is equally valuable for their businesses as for ours.

PSE&G currently meets the transaction eligibility criteria for Form S-3 based on its investment grade credit ratings and its issuance of $1 billion of debt securities over a three-year period. However, in light of the considerations noted above, it is by no means certain that PSE&G will continue to meet this rolling three-year test once the credit rating test is eliminated. Reduced flexibility in market access would likely result in increased costs of capital. This would be due to additional issuance costs if a shelf offering was not available and to higher interest rates as debt issuances could not be optimally timed to coincide with the lowest pricing available from time to time. Viewed in this context, the \$1 billion threshold and 3-year look-back period appear arbitrary and unconnected to the practical realities faced by issuers such as us. We believe that the rule as proposed would introduce a new element of uncertainty for issuers with holding company organizational structures about their continued reliance on Form S-3 and shelf registration offerings, as the ability to meet the threshold from year-to-year may be difficult to predict.

Power currently qualifies for use of Form S-3 due to its investment grade credit ratings. Since Power does not now meet the \$1 billion/3-year eligibility criteria, it would be disadvantaged by the proposed amendment removing the credit rating qualification. It would be even further negatively impacted to the extent that it would no longer be able to use Form S-4 to conduct a Rule 144A exchange offer as conveniently as it has until now. Rule 144A has allowed Power to relatively quickly take advantage of more favorable market conditions than would be the case if required to first file a registration statement and await effectiveness before selling its securities. If incorporation by reference to Exchange Act periodic reports is restricted to S-3 eligible issuers, the relative ease of conducting a Rule 144A exchange offer by companies such as Power would evaporate. As with PSE&G, this reduced flexibility to efficiently issue debt would likely cause an increase in transaction costs.

The loss of flexibility in making quick, efficient and cost-effective decisions based on business needs and market conditions could prevent us from managing our liquidity as optimally as is now possible and raising capital to fund growth opportunities as well as necessary investments. Inability to access the markets at desirable times potentially could be deleterious to our business and financial position and thus have a negative impact on our debt, and equity, investors. This likely would be so for others who also are no longer able to use Form S-3.

Further, increased costs could harm our competitive position at Power relative to our generating company competitors not so constrained by applicable capital-raising rules. As regards PSE&G, increased costs could be expected to be passed on to utility customers through higher rates, impacting not only retail ratepayers but commercial and industrial users as well. Rate sensitivity of these later customer classes influences their business planning and decision-making processes, potentially impacting their continued location and future investments in our service territory.

Alternative Proposal

As noted above, there can be great variability in the amount of debt issued in any particular period. Hence, we believe that an activity-based test, such as the \$1 billion/3-year standard, is inadequate by itself as a means of determining which issuers have sufficient market following to be deserving of S-3 availability. Rather, we believe that more appropriate criteria would gauge market following by establishing three alternative tests, meeting any one of which would be sufficient to confer S-3 eligibility on an issuer.

The first would be a "debt float" (aggregate outstanding debt securities) test. Under this suggested alternative, an issuer would need to have outstanding debt securities of \$1 billion. Eligibility under this test would be relatively easy to determine and is directly relevant to the Commission's concern with market-following. The more debt that is outstanding, the more likely there is to be a robust secondary market, regardless of how recently the debt was issued. This is true whether the debt is publicly-held or was issued under a Securities Act exemption from registration. To allay concerns regarding the availability of public information, we would support limiting this alternative requirement to the aggregate of publicly-held debt that is subject to the reporting requirements of the Exchange Act and non-registered debt containing Exchange Act reporting covenants.

We do not believe it is relevant for investor protection to exclude from the securities counted for this test those which were initially issued under Rule 144A and later exchanged for Securities Act registered debt. In anticipation of the exchange offer, Rule 144A offering documents typically contain substantially identical disclosure as would be found in a Securities Act prospectus. The filing of periodic reports provides investor with the information they need to make informed investment decisions, whether the securities were initially purchased in a registered Securities Act offering or subsequently exchanged in a Rule 144A transaction. Moreover, the existence of covenants obligating issuers in 144A and other non-registered offerings to provide debtholders with disclosure equivalent to that of required Exchange Act reports also serves to protect investors, including those who purchased securities not subject to Securities Act registration or who later acquired securities in the secondary market. As with Rule 144A, in response to investor expectations and in anticipation of the reporting necessary for covenant compliance, offering documents in such transactions typically include substantially the same disclosure as does a prospectus.

The second alternative test would be a "subsidiary/parent" eligibility test. Under this suggested alternative, an issuer which is a subsidiary of a parent issuer that itself meets the Form S-3 criteria would in turn be eligible to use that Form. We believe that such subsidiaries are quite typically followed by the market and analysts along with the parent. Indeed, we believe it would be highly unusual for investors to disregard subsidiary company activities. This is particularly so when the parent is a holding company and also when the subsidiary constitutes a significant portion of the assets and/or earnings of the parent.

Our experience has been that each of our entities with publicly-held securities receives substantially equal appropriate market coverage and attention, with none of them ignored or slighted by analysts. There does not appear to be an interest amongst investors to focus only on one of our public companies. Rather, it seems logical that they have concluded that the best way to understand the parent company, PSEG, is to understand the subsidiary companies. Accordingly, all are scrutinized.

We recognize that there may be instances where a subsidiary might not achieve a market following, in particular, if it is too small relative to the size of the parent. Accordingly, we would support limiting this suggested alternative to issuers which are "significant subsidiaries" under Regulation S-X (i.e., those exceeding 10% of either the total assets of the parent or the income from continuing operations before income taxes, extraordinary items and changes in accounting principle) of the parent.

Further, to bolster assurances about the extent and the quality of available market information, we support limiting this test, in accordance with existing registrant requirements, to those significant subsidiaries which themselves have been Exchange Act reporting companies for at least one-year immediately prior to the filing of Form S-3. A one-year reporting requirement contributes to investor protection as the Commission Staff has the opportunity during that period to review that company's Securities Act and Exchange Act filings. Moreover, the one-year time period allows ample time for investors and analysts to integrate the subsidiary into the overall market following of the parent and its subsidiaries, thus enhancing the scope and content of investor attention.

Third, we would advocate that the originally proposed $1 billion/3-year test be modified, especially if the Commission determines not to adopt the alternatives suggested above. We believe a lower threshold (e.g., $500 million) and longer look-back period (e.g., 5 years) would achieve the desired investor protection while not precluding from Form S-3 use as large a group of issuers as would be the case under the current proposal. Such a modified "recent issuance" test would retain one of the current criteria, while recognizing that the current level sets too high a bar to desirable market access. Too high a threshold would inadvertently and unjustly penalize quality issuers, like PSEG, Power and PSE&G, who have long been able to utilize Form S-3, merely because of the fear that some previously excluded non-investment grade issuers now might be eligible for Form S-3.

Congress and the Commission have determined that reliance on credit ratings is not an appropriate measure to, among other things, assess whether Form S-3 use and attendant shelf registration offerings under Rule 415 should be available to an issuer. It is worth noting that this test was instituted primarily as a way of gauging the adequacy and transparency of investor information and the extent of market following. As the Releases recognize, the transparency of information provided to investors is a valuable metric by which to establish S-3 eligibility criteria. Thus, transparency and market following, factors that supported the use of credit ratings, likewise support the use of the alternatives we suggest in this letter.

If the Commission has any question regarding this letter, please contact the undersigned at 973-430-6131, james.foran@pseg.com or Donald S. Leibowitz, Associate General Corporate Counsel, at 973-430-6305, donald.leibowitz@pseg.com.

Respectfully submitted,

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