

PUBLIC SERVICE ENTERPRISE GROUP INC
Form S-8
March 06, 2015

As filed with the Securities and Exchange Commission on March 6, 2015

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

Public Service Enterprise Group Incorporated

(Exact name of Registrant as specified in its charter)

New Jersey **22-2625848**
(State of Incorporation) **(I.R.S. Employer Identification No.)**
80 Park Plaza, P.O. Box 1171, Newark, NJ 07101-1171

(Address, including zip code, of Registrant's principal executive offices)

PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED

Employee Savings Plan

(Full title of plan)

Caroline Dorsa
Executive Vice President
and Chief Financial Officer

or

M. Courtney McCormick, Esq.
Deputy General Counsel

80 Park Plaza

P.O. Box 1171

Newark, NJ 07101-1171

(973) 430-7000

(Name, address, including zip code, and telephone number, including area code, of agents for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

| | | | |
|-------------------------|-------------------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

| Title of Securities to be registered ¹ | Amount to be registered | Proposed | Proposed | Amount of registration fee ^{1,2} |
|--|----------------------------|---|--|--|
| | | maximum offering price per share ² | maximum aggregate offering price ² | |
| Common Stock (without par value) | 2,000,000 shares | \$41.37 | \$82,740,000 | \$9,614 |

- ¹ Pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.
- ² Estimated in accordance with Rule 457(h) under the Securities Act of 1933 solely for the purpose of determining the registration fee based on the average of the high and low prices of PSEG Common Stock on March 3, 2015 for, as reported in the consolidated reporting system.

2,000,000 SHARES
PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED
COMMON STOCK (WITHOUT PAR VALUE)

offered through the

PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED
EMPLOYEE SAVINGS PLAN

The Employee Savings Plan (Savings Plan) of Public Service Enterprise Group Incorporated (PSEG), provides a convenient method for represented employees of PSEG and its subsidiaries participating in the Savings Plan to purchase shares of PSEG's Common Stock (without par value) through payroll deductions without payment of any brokerage commission or service charge. While shares of Common Stock are held under the Savings Plan, dividends on such shares are used to purchase additional shares of Common Stock.

PSEG's Employee Benefits Committee is the Savings Plan's plan administrator. Aon Hewitt is the Savings Plan's third-party administrator. The Savings Plan provides that shares of Common Stock purchased for participants will be purchased in the open market by an agent independent of PSEG and its affiliates, as selected by PSEG or at PSEG's option, directly from PSEG.

The price per share of Common Stock purchased in the open market by any independent agent will be the weighted average price, excluding brokerage commissions, of all shares acquired by that independent agent for the Savings Plan during the period such purchases are made. Any applicable brokerage commissions for purchases by any independent agent in the open market will be paid for by the Savings Plan and will be an expense of the Savings Plan.

The price per share of Common Stock purchased directly from PSEG will be made at the average of the high and low sale prices of the Common Stock on the New York Stock Exchange on the date that such shares are purchased. In the event that there are no trades reported on the date of purchase, the purchase price will be determined on the basis of such prices on the next prior date on which the Common Stock was purchased.

You should read this prospectus carefully. If you are not now and do not wish to become a participant, or if you wish to continue your present participation without change, no action on your part is required. If you wish to join the Savings Plan or change the amount of your payroll deductions under the Savings Plan, please follow the instructions for submitting an enrollment form to Benefits Express. It is suggested that this prospectus be retained for future reference.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful and complete. Any representation to the contrary is a criminal offense.

March 6, 2015

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GENERAL INFORMATION ABOUT THE SAVINGS PLAN

The Savings Plan is administered by the Employee Benefits Committee appointed from time to time by the PSEG Board of Directors. The Committee has overall responsibility for the administration and interpretation of the Savings Plan.

PSEG Services Corporation, PSEG's subsidiary, is responsible for receiving and processing enrollment forms and making payroll deductions. PSEG Services Corporation, PSEG's subsidiary, is located at 80 Park Plaza, Newark, NJ 07102.

Aon Hewitt is third-party administrator for the Savings Plan. The third-party administrator keeps a continuing record of Participants' accounts under the Savings Plan, sends quarterly statements of account to Participants and performs other duties relating to the Savings Plan for Participants. The third-party administrator is located at Benefits Express (PSEG), 4 Overlook Point, P.O. Box 1584, Lincolnshire, IL 60069-1584.

The Savings Plan has been in effect since 1999 and, previously, was the Employee Savings Plan of Public Service Electric and Gas Company established in 1981. The Savings Plan was last amended effective January 31, 2014. There are approximately 6,328 participants in the Savings Plan.

PUBLIC SERVICE ENTERPRISE GROUP INCORPORATED

EMPLOYEE SAVINGS PLAN

ARTICLE I

PURPOSE

Section 1.1. Purpose. The purpose of the Plan is to encourage and assist thrift and savings by eligible bargaining unit employees of Public Service Enterprise Group Incorporated and certain of its Affiliates through tax-sheltered forms of investment. The Plan and its related Trust Fund are intended to meet the requirements applicable to qualified profit-sharing plans under sections 401(a), 401(k), 401(m) and 501(a) of the Code and the requirements applicable to employee stock ownership plans under section 4975(e)(7) of the Code.

The Plan is intended to constitute a plan described in section 404(c) of the Employee Retirement Income Security Act of 1974, as amended, and Department of Labor regulations section 2550.404c-1. As a result, fiduciaries of the Plan may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by Participants and beneficiaries.

ARTICLE II

DEFINITIONS

When used herein, the words and phrases hereinafter defined shall have the following meanings unless a different meaning is clearly required by the context of the Plan:

Section 2.1. “Account” shall mean the separate account maintained in the Plan for each Participant which consists of the Participant’s Savings Account, Roth Account and/or the Participant’s Frozen ESOP Account.

Section 2.2. “Active Participant” shall mean a Participant who is an Eligible Employee presently making Nondeferred Deposits or for whom Deferred Deposits are presently being made.

Section 2.3. “Additional Lump Sum Deposits” shall mean that amount which is contributed to the Plan by a Participant on a lump sum basis. Additional Lump Sum Deposits shall not be entitled to be matched by Employer Contributions.

Section 2.4. “Affiliate” shall mean—

- (a) any organization while it is a member of a controlled group of corporations (as defined in Code section 414(b) as modified by Code section 415(h)) which includes the Company;
- (b) any trades or businesses (whether or not incorporated) while they are under common control (as defined in Code section 414(c) as modified by Code section 415(h)) with the Company;
- (c) any organization during any period in which it (along with the Company) is a member of an affiliated service group (as defined in Code section 414(m)); or
- (d) any other entity during any period in which it is required to be aggregated with the Company under Code section 414(o).

Section 2.5. “Basic Deposits” shall mean that amount, not less than 1%, nor more than 7% of a Participant’s Compensation, contributed to the Plan through payroll deduction by or on behalf of a Participant which is entitled to be matched by Employer Contributions.

Section 2.6. “Board of Directors” shall mean the Board of Directors of the Company.

Section 2.7. “Cash Balance Plans” shall mean the Cash Balance Pension Plan for Represented Employees of Public Service Enterprise Group Incorporated (formerly known as the “Cash Balance Pension Plan for Represented Employees of Public Service Electric and Gas Company”) or the Cash Balance Pension Plan of Public Service Enterprise Group Incorporated (formerly known as the “Cash Balance Pension Plan of Public Service Electric and Gas Company”).

Section 2.8. “*Code*” shall mean the Internal Revenue Code of 1986, as amended, or as it may be amended from time to time. A reference to a section of the Code shall also refer to any regulations and other guidance issued under that section.

Section 2.9. “*Commissioner*” shall mean the Commissioner of Internal Revenue.

Section 2.10. “*Committee*” “Employee Benefits Committee” shall mean the Employee Benefits Committee of the Company appointed by the Board of Directors.

Section 2.11. “*Company*” shall mean Public Service Enterprise Group Incorporated or its successor.

Section 2.12. “*Company Common Stock*” shall mean the Common Stock, without nominal or par value, of the Company.

Section 2.13. “*Company Common Stock Fund*” shall mean the Fund established pursuant to Section 7.1(a). The Company Common Stock Fund is intended to qualify as an employee stock ownership plan under Code section 4975(e)(7).

Section 2.14. “*Compensation*” shall mean the total remuneration paid to a Participant for services rendered to an Employer excluding the Employer’s cost for any public or private employee benefit plan, but including all Deferred Basic and Supplemental Deposits made by a Participant or on a Participant’s behalf to this Plan and all elective contributions that are made by an Employer on behalf of a Participant which are not includible in income under Code section 125 or 132(f)(4), under rules adopted by the Committee which are uniformly applicable to all Participants similarly situated. However, Compensation shall not include the following:

- (a) any amounts which are deferred under any deferred compensation plan of the Company or any Affiliate and any payments from any such plans of any previously deferred amount;
- (b) any amounts which constitute reimbursement of expenses;
- (c) the following miscellaneous payments:
 - (1) separation pay;
 - (2) gratuity payments upon death;
 - (3) payment for vacation due at time of death;
 - (4) worker’s compensation for permanent partial disability;
 - (5) Employer contributions for social security, unemployment compensation or other taxes;
 - (6) Employer payments toward reimbursement of adoption expenses; and
 - (7) payments made expressly for the purpose of satisfying withholding tax liabilities on awards earned pursuant to any employee suggestion program of any Employer;
- (d) the following special international payments:
 - (1) international service premium;
 - (2) commodities and services allowance;
 - (3) equalization pay;
 - (4) transportation allowance;
 - (5) foreign service pay; and
 - (6) hardship allowance; and
- (e) any amounts received by a Participant as a result of the sale of vacation entitlements.

Effective from the first payroll period beginning after March 1, 2010, Compensation for Participants, other than Participants in units of Employees represented by Utility Workers Union of America (UWUA) Local 601, shall be limited to a Participant’s base pay, his/her overtime pay and amounts received pursuant to the incentive

compensation program in which he/she is a participant. Compensation shall, however, exclude the Company's or Participating Affiliate's cost for any public or private employee benefit plan, including this Plan, but shall include all elective contributions that are made by the Company or Participating Affiliate on behalf of a Participant which are not includible in income under Code sections 125, 132(f)(4) or 401(k). Compensation shall also exclude any amounts that would otherwise be excluded pursuant to the terms of subparagraphs (a), (b), and (c), above).

Notwithstanding anything in the Plan to the contrary, Compensation shall include differential pay in the Plan Year in which it is paid.

In any case, however, Compensation of each Participant taken into account for any Plan Year shall not exceed the applicable compensation limit for such year determined under Code section 401(a)(17). This limit on annual compensation shall be adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B).

Section 2.15. "Deferred" reference to Deposits shall mean that such Deposits are deferred from current Federal income taxation under Code section 401(k), provided, however, that effective August 1, 2006, the term "Deferred" in reference to Deposits shall also apply to Roth Elective Deferrals.

Section 2.16. "Deposits" shall mean the aggregate of Additional Lump Sum Deposits, Basic Deposits and Supplemental Deposits made by or on behalf of a Participant to his or her Account. The total of all Deposits made by or on behalf of a Participant in any Plan Year shall not exceed 50% of the Participant's Compensation for such Plan Year. Deposits shall include "Deferred Compensation" credited to the Participant under the U.S. Energy Partners 401(k) Plan, "Elective Deferrals" credited to the Participant under the Arden Engineering Constructors, Inc. 401(k) Plan, "Employee Pre-Tax Basic Contributions" credited to the Participant under the Fluidics, Inc. Retirement and 401(k) Plan, and "Salary Reduction Contributions" credited to the Participant under the Wisvest-Connecticut 401(k) Plan.

Section 2.17. "Disability" shall mean any physical or mental condition which renders a Participant incapable of performing further work for his or her Employer, as certified in writing by a Doctor of Medicine designated and approved by the Committee.

Section 2.18. "Eligible Employee" shall mean any individual included in a unit of employees covered by a collective bargaining agreement who is an Employee of the Company or a Participating Affiliate and who is receiving remuneration for personal services rendered to the Company or Participating Affiliate other than (1) solely as a director of the Company or a Participating Affiliate, (2) as a consultant, (3) as an independent contractor, (4) as an individual who is a "leased employee" within the meaning of Code section 414(n) and as defined in section 2.26(e) of this Plan, or (5) any other individual engaged by the Company or Participating Affiliate in a relationship that the Company characterizes as other than an employment relationship or who has waived his or her rights to coverage as an employee (regardless of whether a determination is made by the Internal Revenue Service or other governmental agency or court after the individual is engaged to perform such services that the individual is an employee of the Company or Participating Affiliate for the purposes of the Code or otherwise).

Section 2.19. "Employee" shall mean any individual employed by the Company or an Affiliate.

Section 2.20. "Employer" shall mean the Company and any Participating Affiliate.

Section 2.21. "Employer Contributions" shall mean the amounts contributed to the Plan on behalf of Participants by an Employer in accordance with Article V. Employer Contributions shall include "Employer's Matching Contributions" and "Employee Nonelective Contributions" credited to the Participant under the Fluidics, Inc. 401(k) Plan and "Employer Matching Contributions" and "Employer Discretionary Contributions" credited to the Participant under the Wisvest-Connecticut 401(k) Plan.

Section 2.22. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or as it may be amended from time to time. A reference to a section of ERISA shall also refer to any regulations and other guidance issued under that section.

Section 2.23. "Frozen ESOP Account" shall mean that separate portion of an Account established pursuant to Section 9.1 which evidences the shares of Company Common Stock transferred to the Plan for the Account of a Participant, pursuant to the merger with this Plan with the Public Service Electric and Gas Company Tax

Reduction Act Employee Stock Ownership Plan (TRASOP) and/or the Public Service Electric and Gas Company Payroll-Based Employee Stock Ownership Plan (PA YSOP), including the net worth of the Trust Fund attributable thereto.

Section 2.24. “*Funds*” shall mean any of the funds or other investment options established under the Plan for the investment of Participants’ Accounts and a loan fund for each Participant who takes a loan under Section 11.13. The Thrift and Pension Investment Committee shall have the discretion to add, change, or eliminate Funds as it deems appropriate. Except as otherwise directed by the Thrift and Pension Investment Committee, the Funds shall include a Company Common Stock Fund and a Personal Choice Retirement Account Fund.

Section 2.25. “*Highly Compensated Employee*” shall mean:

- (a) any Employee, as defined in section 414(q) of the Code, who at any time:
 - (1) during the Plan Year or the preceding Plan Year was at any time a 5% owner (as defined in Code section 416(i)(1)); or
 - (2) for the preceding Plan Year, received Compensation (as defined in section 12.1(c)) from the Company or an Affiliate in excess of \$80,000 (as adjusted for cost-of-living increases).
- If so elected, the Company may also provide that an Employee with Compensation in excess of \$80,000 (as adjusted for cost-of-living increases) shall be a Highly Compensated Employee only if such Employee is in the
- (b) group consisting of the top 20% of Employees when ranked on the basis of Compensation paid during such Plan Year, excluding those Employees permitted to be excluded pursuant to Code section 414(q) (herein referred to as the “Top Paid Group Election”).

Effective for Plan Years beginning on or after January 1, 1997, the Company shall determine its Highly Compensated Employees without application of the Top Paid Group Election. Notwithstanding the foregoing, the Company may apply the Top Paid Group Election with respect to a Plan Year so long as such election is applied consistently to the determination years of all plans (retirement and non-retirement) of the Company that begin within the same calendar year and so long as the Plan is amended to reflect the application of the Top Paid Group Election to a given Plan Year.

Section 2.26. “*Hour of Service*” shall mean:

- (a) Each hour for which an Employee is directly or indirectly paid remuneration or entitled to such payment by an Employer for the performance of duties;
 - Each hour for which an Employee is paid or entitled to payment by the Company on account of a period of time during which no duties are performed (whether or not the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military service, or leave of absence; provided,
 - (b) however, that an Employee shall not be credited with more than 501 Hours of Service under this sentence for any continuous period during which he or she performs no duties for the Company. Notwithstanding the preceding provisions of this subsection (b), no credit will be given:
 - for an Hour of Service for which the individual is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker’s compensation, unemployment compensation, or disability insurance laws; or
 - (2) for an Hour of Service for which a payment is made, which solely reimburses the individual for medical or medically related expenses incurred.
- (c) Each hour not otherwise credited under the Plan for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer. No more than 501 Hours of Service shall be credited under this item (c) for a period of time during which the Employee did not or would not have performed duties.
- (d) Hours of Service will be credited for employment with an Affiliate.

Hours of Service will be credited for employment as a “leased employee” as that term is defined in Code section 414(n) and as defined below, if such leased employee participates in the Plan as a result of subsequent employment with the Company or an Affiliate. A “leased employee” shall mean a person performing services for the Company or an Affiliate who is not a common-law employee where—

- (1) such services are provided pursuant to an agreement between the Participating Affiliate and any other person or entity (hereinafter referred to as the “leasing organization”);
- (2) such person has performed the services for the Participating Affiliate on a substantially full-time basis for a period of at least one year;
- (3) such services are performed under the primary direction of or control by the Participating Affiliate; and the person is not covered by a safe harbor plan under Code section 414(n)(5) maintained by the leasing organization. In applying the provisions of this paragraph (4), the Company or an Affiliate may rely upon a written certificate by the leasing organization that the individual is covered by a plan of the type described.

An Employee shall be credited with an Hour of Service for each month during any period the Employee is absent from work with the Company or an Affiliate for qualified military service in accordance with Code section 414(u). Notwithstanding the foregoing, if the Employee fails to report to work before reemployment rights expire, the Employee shall not receive credit for Hours of Service during such military leave.

The number of Hours of Service to be credited an Employee shall be on the basis of months of employment under which an Employee is credited with 190 Hours of Service for each month for which such Employee would be required to be credited with at least one Hour of Service.

The crediting of Hours of Service under this Plan will be applied under the rules of paragraph (b) and (c) of the Department of Labor Regulation 2530.200b-2, which, by this reference, will be specifically incorporated in full into this Plan.

Section 2.27. “Investment Managers” shall mean an investment manager as defined in ERISA section 3(38).

Section 2.28. “Lay Off” or “Laid Off” shall mean a Participant’s involuntary separation from service with an Employer because of a reduction in work force at a time when there is no further work available with the Employer for which the Participant is qualified.

Section 2.29. “Matured” reference to Deposits and Employer Contributions shall mean that the respective amount has been held in the Plan for at least 24 months. The 24-month period will include periods during which Deposits and Employer Contributions held in the Participant’s Account were held in the Fluidics, Inc. Retirement and 401(k) Plan. The 24-month period shall also include periods during which Deposits and Employer Contributions held in the Participant’s Savings Account were held in the Wisvest-Connecticut 401(k) Plan, if applicable.

Section 2.30. “Nondeferred” reference to Deposits shall mean that such Deposits are not deferred from current Federal income taxation under Code section 401(k).

Section 2.31. “Participant” shall mean any person who has an interest in the Trust Fund.

Section 2.32. “Participating Affiliate” shall mean any Affiliate of the Company which: (a) adopts the Plan with the approval of the Board of Directors; (b) authorizes the Board of Directors, the Employee Benefits Committee and the Thrift and Pension Investment Committee to act for it in all matters arising under or with respect to the Plan; and (c) complies with such other terms and conditions relating to the Plan as may be imposed by the Board of Directors. For the avoidance of any doubt, a Participating Affiliate shall not include Long Island Electric Utility ServCo LLC.

Section 2.33. “Pension Plans” shall mean the Pension Plan of Public Service Enterprise Group Incorporated (formerly known as the “Pension Plan of Public Service Electric and Gas Company”).

Section 2.34. "Personal Choice Retirement Account Fund" shall mean the Fund established pursuant to Section 7.1(b).

Section 2.35. "Plan" shall mean this Public Service Enterprise Group Incorporated Employee Savings Plan (formerly known as the "Public Service Electric and Gas Company Employee Savings Plan"), including all amendments hereto which may hereafter be made.

Section 2.36. "Plan Year" shall mean the calendar year.

Section 2.37. "Qualified Domestic Relations Order" or "QDRO" shall mean any judgment, decree or order pursuant to a state domestic relations or community property law which relates to the provision of child support or marital property rights, which creates or recognizes the existence of an alternate payee's right to (or assigns to all alternate payee the right to) receive all or part of a Participant's Account, and which meets the requirements of (a) and (b) below, as interpreted in accordance with Code section 414(p):

(a) such order specifies:

- (1) the name and last known mailing address of the Participant and each alternate payee;
 - (2) the amount or the percentage of the Participant's Account to be paid to each alternate payee, or the manner in which such amount or percentage is to be determined;
 - (3) the number of payments or the period to which the order applies; and
 - (4) each plan to which such order applies; and
- (b) such order does not require the Plan to:
- (1) provide any type or form of benefit or option not otherwise provided under the Plan;
 - (2) provide increased benefits; or
 - (3) pay to an alternate payee amounts required to be paid to another alternate payee under a prior QDRO.

Section 2.38. "Record Keeper" shall mean the person(s) or entity(ies) designated by the Committee to maintain the records of the Plan and Plan Accounts and to perform such other functions as may be designated by the Committee.

Section 2.39. "Required Beginning Date" shall mean with respect to distributions to any Participant, no later than the April 1 of the calendar year following the calendar year in which the Participant attains age 70^{1/2}; provided, however, that with respect to distributions to any Participant who attained age 70 before July 1, 1987 and who was not a "5% owner," the Required Beginning Date for such Participant shall be April 1 of the calendar year following the calendar year in which (1) the Participant attains age 70^{1/2} or (2) the Participant retires, whichever is later. Effective as of January 1, 2003, "Required Beginning Date" shall mean with respect to distributions to any Participant other than a 5% owner, April 1 of the calendar year following the calendar year in which the Participant attains age 70^{1/2} or retires, whichever is later. The Required Beginning Date for a 5% owner shall mean no later than the April 1 of the calendar year following the calendar year in which such 5% owner attains age 70^{1/2}. For purposes of this Section 2.40, a "5% owner" shall mean any person owning (or considered as owning within the meaning of Code section 318) more than 5% of the outstanding stock of an Employer or stock possessing more than 5% of the total combined voting power of such stock.

Section 2.40. "Retirement" shall mean the termination of employment by a Participant, other than by reason of his or her death, after attaining age 65 or—

- (a) in the case of a participant in the Pension Plan, when the sum of the Participant's age and credited service (as defined in the Pension Plan) equals or exceeds 80 or under circumstances otherwise entitling the Participant to an immediately payable periodic retirement benefit under the Pension Plan, or
- (b) in the case of a participant in the Cash Balance Plan, after attaining age 55 and completing five or more years of credited service (as defined in the Cash Balance Plan).

Section 2.41. “Retirement Choice Programs” shall mean the Public Service Enterprise Group Incorporated Retirement Choice Program (formerly known as the “Public Service Electric and Gas Company Retirement Choice Program”) or the Public Service Enterprise Group Incorporated Retirement Choice Program for Represented Employees (formerly known as the “Public Service Electric and Gas Company Retirement Choice Program for Represented Employees”).

Section 2.42. “Rollover Contributions” shall mean Eligible Employee contributions transferred to the Plan, in accordance with Section 4.14, from a trust under another plan qualified under Code sections 501(a) and 401(a), respectively. Rollover Contributions shall also include “Rollover Contributions” credited to the Participant under the Fluidics, Inc. Retirement and 401(k) Plan, or the Wisvest-Connecticut 401(k) Plan. Effective as of January 1, 2002, Rollover Contributions shall also include Eligible Employee contributions transferred to the Plan, in accordance with Section 4.15, from the following:

- (a) a qualified plan described in both Code sections 401(a) and 403(a), including after-tax employee contributions;
- (b) an annuity contract described in Code section 403(b);
- (c) an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- (d) an individual retirement account or annuity described in Code sections 408(a) or 408(b) that is eligible to be rolled over.

Rollover Contributions shall include any amounts from a “qualified Roth contribution program” as defined in Code section 402A(b).

Section 2.43. “Roth Account” shall mean that separate portion of an Account established pursuant to Section 8.1(b) which evidences the value of Roth Elective Deferrals on behalf of a Participant under the Plan, including the net worth of the Trust Fund attributable thereto.

Section 2.44. “Roth Elective Deferral” shall mean an elective deferral by a Participant that is designated irrevocably by the Participant in accordance with Section 4.3 as a Roth elective deferral and that is being made in lieu of all or a portion of the Deferred Deposits that are pre-tax elective deferrals the Participant is otherwise eligible to make under the Plan. Roth Elective Deferrals are treated as includable in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not made a deferral election.

Section 2.45. “Savings Account” shall mean that separate portion of an Account established pursuant to Section 8.1(a) and which consists of the sum of the following subaccounts of such Participant:

Basic Deposit Subaccount shall mean that portion of a Participant’s Savings Account which evidences the value of (a) Basic Deposits by or on behalf of a Participant under the Plan, including the net worth of the Trust Fund attributable thereto.

Supplemental Deposit Subaccount shall mean that portion of a Participant’s Savings Account which evidences the value of Supplemental Deposits and Additional Lump Sum Deposits under the Plan, assets transferred by the Participant from his or her Frozen ESOP Account, and Rollover Contributions to the Plan by or on behalf of a (b) Participant, including the net worth of the Trust Fund attributable thereto, and also including Deposits and Rollover Contributions credited to the Participant under the Fluidics, Inc. Retirement and 401(k) Plan and the Wisvest-Connecticut 401(k) Plan and merged into this Plan.

Employer Contribution Subaccount shall mean that portion of a Participant’s Savings Account which evidences the value of Employer Contributions which have been credited to a Participant’s Account under Section 5.1 of the Plan (c) (less any forfeitures), including the net worth of the Trust Fund attributable thereto, and also including Employer Contributions credited to the Participant under the Fluidics, Inc. Retirement and 401(k) Plan and the Wisvest-Connecticut 401(k) Plan and merged into this Plan.

Retirement Choice Program Allocation Subaccount shall mean that portion of a Participant's Savings Account (d) which evidences the value of certain service and age points allocated to this Plan pursuant to the Cash Balance Plan and the Retirement Choice Plan and in accordance with Section 5.6 herein, including the net worth of the Trust Fund attributable thereto.

Section 2.46. "Spouse" shall mean the person to whom the Participant is married. Spouse shall include a person of the same sex if the individuals are lawfully married under applicable law even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. Spouse shall not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a manage under the laws of that state.

Section 2.47. "Supplemental Deposits" shall mean the amount, if any, of Compensation contributed to the Plan through payroll deduction by or on behalf of a Participant which is greater than the maximum permitted Basic Deposit. Supplemental Deposits shall include "Deferred Compensation" credited to the Participant under the U.S. Energy Partners 401(k) Plan "Elective Deferrals" credited to the Participant under the Arden Engineering Constructors, Inc. 401(k) Plan, "Employee Pre-Tax Basic Contributions" credited to the Participant under the Fluidics, Inc. Retirement and 401(k) Plan, and "Salary Reduction Contributions" credited to the Participant under the Wisvest-Connecticut 401(k) Plan.

Section 2.48. "Thrift Plan" shall mean the Public Service Enterprise Group Incorporated Thrift and Tax-Deferred Savings Plan (formerly known as the Public Service Electric and Gas Company Thrift and Tax-Deferred Savings Plan).

Section 2.49. "Trust Agreement" shall mean the agreement between the Company and the Trustee which provides for the management of the Trust Fund and the investment of Deposits, Employer Contributions and Rollover Contributions to the Plan and investment of Plan assets.

Section 2.50. "Trust Fund" shall mean the aggregate of Additional Lump Sum Deposits, Basic and Supplemental Deposits made by or on behalf of Participants, Rollover Contributions and Employer Contributions, together with Frozen ESOP Accounts, increased by any profits or income thereon, and decreased by any losses thereon and by any payments made therefrom.

Section 2.51. "Trustee" shall mean any individual(s) or corporation(s) by whom any assets of the Plan are held under the Trust Agreement.

Section 2.52. "Year of Service" shall mean the 12 consecutive month period beginning on the first day of the month in which an Employee commences employment with the Company or an Affiliate and each succeeding 12 consecutive month period beginning on the yearly anniversary of such day, during which the Employee completes not less than 1,000 Hours of Service. The determination of whether an Employee shall have completed not less than 1,000 Hours of Service during any such period shall be made by crediting such Employee with 190 Hours of Service for each calendar month during such period in which the Employee is entitled to be credited with at least one Hour of Service for such month. For purposes of determining eligibility for Employer Contributions under Section 5.1, an Employee shall complete a Year of Service during the month in which he or she is credited with 1,000 Hours of Service during the applicable 12-month period. In addition, any Employee whose Account includes balances transferred from the Fluidics, Inc. Retirement and 401(k) Plan or the Wisvest-Connecticut 401(k) Plan shall, for purposes of determining Year of Service hereunder, be credited with service with Fluidics, Inc., Wisvest Corporation or Wisvest-Connecticut LLC, as appropriate, in accordance with this Section 2.52.

Furthermore, for purposes of determining Year of Service hereunder, any Employee who as of January 11, 1998 was an employee of Fluidics, Inc., who, effective as of January 12, 1998 became an Employee of the Company or an Affiliate, and who is a member of one of the following units of Employees covered by a collective bargaining agreement, shall for purposes of this Section 2.52 only, be deemed to have commenced employment as of January 12, 1998. The foregoing sentence shall not apply with respect to any Employee whose Account includes balances transferred from the Fluidics, Inc. Retirement and 401(k) Plan.

- (a) Bristol Myers Squibb (NJ) Local 9 Plumbers and Pipefitters Union
 - (b) Local 9 Plumbers and Pipefitters
 - (c) Local 107 (PA) Teamsters
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**ARTICLE III
PARTICIPATION**

Section 3.1. Participation. Each Eligible Employee may become a Participant by applying with the Record Keeper to establish a Savings Account or Roth Account or accept a Rollover Contribution on such Eligible Employee's behalf, when a Frozen ESOP Account was established on his or her behalf, or when the Eligible Employee elects to make transfers of age and service credits pursuant to the terms of the Cash Balance Plan and the Retirement Choice Program. An Eligible Employee who, at the time he or she becomes employed by the Company or a Participating Affiliate is a participant in the Thrift Plan, shall be automatically enrolled in the Plan, and account balances held in that plan shall be transferred to this Plan.

By contacting the Record Keeper and using its automatic voice response system or such other method as approved by the Committee, the Eligible Employee can (a) arrange for the payment of an Additional Lump Sum Deposit to the Plan, (b) authorize his or her Employer to withhold an amount in a specified percentage of his or her Compensation, (c) authorize his or her Employer to accept a Rollover Contribution from another eligible plan in accordance with Section 4.14, (d) authorize establishing an Account to accept transfers of age and service credits pursuant to the terms of the Cash Balance Plan and the Retirement Choice Program, and (e) authorize the Record Keeper and/or Employer to pay any such amount to the Trustee for investment in an applicable Account under the Plan in accordance with the Eligible Employee's instructions.

An Eligible Employee who was a former employee of Wisvest-Connecticut LLC or Wisvest Corporation shall become a Participant upon the earlier of: (i) the establishment of a Savings Account to accept the assets merged with this Plan from the Wisvest-Connecticut 401(k) Plan, effective December 31, 2002, or (ii) any of the methods for participation set forth above in this Section 3.1.

Notwithstanding the foregoing, in the case of any Eligible Employee who is hired or rehired to a permanent, full-time position on or after January 1, 2008, the Eligible Employee shall be provided with information on automatic enrollment upon his or her initial eligibility for the Plan. Unless the Eligible Employee timely elects to decline making Deposits or to elect an alternate contribution percentage, the Eligible Employee shall be automatically enrolled in the Plan and shall have Basic Deferred Deposits (none of which shall be designated as Roth Elective Deferrals) made by the Employer on his or her behalf in an amount equal to 3% of his or her Compensation. An Eligible Employee who is automatically enrolled may elect to withdraw Basic Deferred Deposits made pursuant in this paragraph (together with attributable earnings), provided that any such election must be made within 90 days of the Eligible Employee's date of hire and in accordance with procedures established by the Committee.

Participation in the Plan is entirely voluntary.

Section 3.2. Effective Date of Participation. Subject to the provisions of Section 3.1 above, the effective date of participation shall be the earliest of the following: (a) participation in the Plan shall be effective for an Eligible Employee and payroll deductions shall commence, as soon as practicable after the Eligible Employee has applied to the Record Keeper for participation; (b) participation in the Plan for an Eligible Employee whose account is transferred from the Thrift Plan to this Plan shall be effective as of the date such individual became an Eligible Employee under the terms of this Plan; (c) participation in the Plan for an Eligible Employee making a Rollover Contribution or a transfer of age and service credits pursuant to the terms of the Cash Balance Plan and the Retirement Choice Program shall be effective as soon as practicable after such Eligible Employee's Rollover Contribution or transferred age and service credits are accepted for transfer; (d) participation of an Eligible Employee in the Plan with respect to the Frozen ESOP Account became effective upon receipt by the Plan of the assets credited to the account of such Eligible Employee in Public Service Electric and Gas Company's TRASOP and/or PAYSOP pursuant to a merger of such plan or plans with this Plan; and (e) participation in the Plan shall be effective for a newly hired Eligible Employee who is automatically enrolled in the Plan and payroll deductions shall commence as soon as practicable after such Eligible Employee's date of hire.

**ARTICLE IV
DEPOSITS**

Section 4.1. Basic Deposits. Subject to the limitations of Sections 4.6 and 5.4, an Eligible Employee may elect:

- (a) to make Basic Nondeferred Deposits to the Plan in an amount equal to any integral multiple of 1% of his or her Compensation up to a total of 8% each pay period;
- (b) to have Basic Deferred Deposits made to the Plan by an Employer on his or her behalf in an amount equal to any integral multiple of 1% of his or her Compensation up to a total of 7% each pay period; or
- (c) to make, or have made by an Employer on his or her behalf, any combination of Deposits under (a) or (b) above, totaling up to 7% of his or her Compensation each pay period;

Effective August 1, 2006, the provisions of section 4.3 regarding Roth Elective Deferrals shall apply to Basic Deferred Deposits. Basic Deposits made by or on behalf of a Participant shall be paid over by the Employer to the Trustee and deposited in the Trust Fund as soon as practicable after deduction and, in any event, within 15 business days after the end of the month in which such deduction is made. Such Basic Deposits shall be credited as soon as practicable to such Participant's Basic Deposit Subaccount in the Plan, or to the Participant's Roth Account, as applicable.

Section 4.2. Supplemental Deposits. Subject to the limitations of Sections 4.6 and 5.4, each Participant who is electing the maximum permitted Basic Deposit to the Plan may also elect:

- (a) to make Supplemental Nondeferred Deposits to the Plan in an amount equal to any integral multiple of 1% of his or her Compensation to a total of 43% of his or her Compensation each pay period;
- (b) to have Supplemental Deferred Deposits made by an Employer on his or her behalf in an amount equal to any integral multiple of 1% of his or her Compensation up to a total of 43% of his or her Compensation each pay period; or
- (c) to make, or have made by an Employer on his or her behalf, any combination of the Deposits specified in (a) or (b) above, totaling up to 43% of his or her Compensation each pay period.

Effective August 1, 2006, the provisions of section 4.3 regarding Roth Elective Deferrals shall apply to Supplemental Deferred Deposits. Supplemental Deposits made by or on behalf of a Participant shall be paid over by an Employer to the Trustee and deposited in the Trust Fund as soon as practicable after deduction and, in any event, within 15 business days after the end of the month in which such deduction is made. Such Supplemental Deposits shall be credited as soon as practicable to such Participant's Supplemental Deposit Subaccount in the Plan, or to the Participant's Roth Account, as applicable.

Section 4.3. Roth Elective Deferrals. Effective August 1, 2006, a Participant may irrevocably elect that all or any portion of his or her Deferred Deposits, both Basic and Supplemental, shall be made as a Roth Elective Deferral. Roth Elective Deferrals shall be credited to the Participant's Roth Account in the same time and manner such amounts would have been credited to the Participant's Basic Deposit Subaccount or Supplemental Deposit Subaccount but for the election to have these contributions made as Roth Elective Deferrals. Notwithstanding any provision of this Plan to the contrary, Roth Elective Deferrals may not be recharacterized as Nondeferred Deposits.

Section 4.4. Additional Lump Sum Deposits. Within any Plan Year, each Participant may make one or more Additional Lump Sum Deposits on a Nondeferred basis in the minimum amount of \$250 and in such total amounts which, when aggregated with such Participant's Basic Deposits and Supplemental Deposits, do not exceed 50% of his or her Compensation for that Plan Year and subject to the limitations of Sections 4.6, 4.13 and 5.4. Additional Lump Sum Deposits made by a Participant shall be paid over by the Record Keeper to the Trustee and deposited in the Trust Fund as soon as practicable, but no later than 15 business days after the end of the month in which such Additional

Lump Sum Deposit is received. Such Additional Lump Sum Deposits shall be credited as soon as practicable to such Participant's Supplemental Deposit Subaccount in the Plan.

Section 4.5. Method of Deposits. Basic Deposits and Supplemental Deposits by or on behalf of Active Participants shall be made by means of payroll deduction. For convenience of administration, if the percentage of Compensation elected to be contributed to the Plan by an Active Participant is not equal to a whole dollar amount, such amount will be increased to the next whole dollar amount in establishing the deduction to be made from such Active Participant's pay. In addition, if an Active Participant's Compensation is changed, the resulting change in deduction shall be made as soon as practicable after such change in Compensation.

Additional Lump Sum Deposits shall be paid directly by Participants to the Record Keeper who shall forward them to the Trustee for investment in the Participant's Savings Account in accordance with his or her then current investment direction.

Section 4.6. Limits on Deferred Deposits.

In no event may Deferred Deposits for any Participant attributable to any taxable year of such Participant (presumably the calendar year) exceed the amount permitted by Code section 402(g) in effect for such taxable year, except to the extent permitted under Section 4.6(b) of the Plan below. Where a Participant elects under Section 4.1 to have Deferred Deposits made by an Employer to the Plan which would otherwise exceed the limit of this Section 4.6(a) and 4.6(b) below, if applicable, such excessive Deferred Deposits (other than Roth Elective Deferral (a) amounts) shall be deemed to be Nondeferred Deposits to the Plan ("Deemed Nondeferred Deposits") rather than Deferred Deposits to the Plan; provided, however, that such Deemed Nondeferred Deposits shall be subject to the limits and rules of Sections 4.1 and 4.2; and provided further, that such Deemed Nondeferred Deposits shall be deemed to be Basic Nondeferred Deposits (and, therefore, matched by Employer Contributions as set forth in Article V) to the extent possible under the limits of Sections 2.5 and 4.1, taking into account other Basic Deferred and Nondeferred Deposits of the Participant.

In addition to the Deposits allowed by this Article IV, Eligible Employees who have attained age 50 before the close of a Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code section 414(v) (and in the amount of allowable catch-up contributions for the Plan Year as set forth in Code section 414(v)). Such catch-up contributions shall not be taken into account for purposes of Section 4.6(a) and Article XII of the Plan. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, (b) by reason of such catch-up contributions. Unless otherwise determined by the Employee Benefits Committee, no election shall be required for the making of catch-up contributions, provided, however, that a Participant shall be able to elect that all or a portion of his or her catch-up contributions shall be Roth Elective Deferrals (in accordance with Section 4.3) and credited to such Participant's Roth Account. To the extent that a Participant has Deferred Deposits which would otherwise exceed the limit of Section 4.6(a) above, such excess Deferred Deposit shall first be deemed a catch-up contribution if allowed under the provisions of this Section 4.6(b). Any remaining excess Deferred Deposit after the application of this Section 4.6(b) shall be treated in accordance with Section 4.6(a) above.

Section 4.7. Distribution of Excess Deferral Amounts.

Notwithstanding any other provision of the Plan to the contrary, an Employer shall distribute any Excess Deferral (a) Amount (as defined below), adjusted according to Section 4.7(d), to Participants who claim such allocable Excess Deferral Amounts for a calendar year. Such distribution shall be made no later than the April 15th next following the end of the calendar year for which such claim is made.

(b) For purposes of this Section 4.7, "Excess Deferral Amount" shall mean the amount of Deferred Deposits for a calendar year that the Participant allocates to this Plan and claims pursuant to the election procedure set forth in Section 4.7(c) below. The Committee shall determine the extent to which the Excess Deferral Amount is composed of Deferred Deposits other than Roth Elective Deferrals and the extent to which the Excess Deferral Amount is

composed of Roth Elective Deferrals, in accordance with administrative procedures applied uniformly to all Participants.

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A Participant's election to claim an Excess Deferral Amount for a calendar year shall be in writing, shall be submitted to the Committee no later than the March 1st next following the end of such calendar year, shall specify the Excess Deferral Amount and shall state that if such amount is not distributed, such Excess Deferral Amount, when added to amounts deferred under other plans or arrangements described in Code sections 401(k), 408(k) or 403(b), exceeds the limit imposed on the Participant by Code section 402(g) for the taxable year (calendar year) in which the deferral occurred.

A Participant shall be deemed to make an election to claim an Excess Deferral Amount for a calendar year to the extent that the amount of Deferred Deposits, when aggregated with deferrals by the Participant pursuant to any other cash or deferred arrangement maintained by the Company or an Affiliate under Code section 401(k), exceeds the limit imposed by Code section 402(g) for such year.

The amount distributed to a Participant pursuant to this Section 4.7 with respect to a calendar year shall be increased or decreased, as applicable, by investment income or losses attributable thereto, as calculated in accordance with applicable Treasury regulations or other regulatory guidance. The amount distributed shall be adjusted for attributable income or losses for the period after the end of the calendar year for which the contributions were made and prior to the distribution date. Notwithstanding the foregoing, for Plan Years beginning on or after January 1, 2007, the amount distributed to a Participant shall include any income attributable to any period after the end of the calendar year through the distribution date.

In the event that the Excess Deferral Amount consists of Roth Elective Deferrals, the excess Roth Elective Deferrals shall be returned by April 15 of the year following the year of contribution.

Section 4.8. Code Section 401(k) Limits on Deferred Deposits.

Effective January 1, 1997, Deferred Deposits for any Plan Year shall not result in the actual deferral percentage of the group of Highly Compensated Employees eligible to participate in the Plan for such Plan Year exceeding the actual deferral percentage of the group of all other Eligible Employees for the current Plan Year by more than the greater of:

- (1) one and one-quarter times; or
- (2) the lesser of (A) two times or (B) two percentage points.

However, notwithstanding the above, the Committee may use the actual deferral percentage for the prior Plan Year for the group of Eligible Employees who are not Highly Compensated Employees by making an election at a time, and in a manner, prescribed by the Secretary of the Treasury. Such election may be revoked for a following Plan Year only in accordance with rules prescribed by the Secretary of the Treasury.

The actual deferral percentage of each group of Eligible Employees shall be the average of the ratios (calculated separately for each Eligible Employee in each group) of (i) the Deferred Deposits made on behalf of each Eligible Employee for the relevant Plan Year to (ii) such Eligible Employee's Compensation for the relevant Plan Year (or in the discretion of the Committee, for the portion of the Plan Year during which the Employee was an Eligible Employee, provided this alternative is applied uniformly to all Employees for the Plan Year on a reasonably consistent basis from Plan Year to Plan Year).

"Compensation" for purposes of this Section 4.8 only shall mean an Eligible Employee's compensation as determined in any manner that satisfies the requirements of Code section 414(s).

The Committee shall, consistent with regulations under the Code, establish nondiscriminatory rules to meet the requirements of this Section 4.8 provided, however, that any distribution to Highly Compensated Employees of Deferred Deposits to meet the requirements of this Section 4.8 shall be made on the basis of the dollar amount of Deferred Deposits on behalf of each such Highly Compensated Employee. Any distribution of Deferred Deposits made in accordance with this Section 4.8 shall occur no later than the last day of the Plan Year following the Plan Year for which such Deferred Deposit was made.

The amount of Deferred Deposits which must be distributed to any Highly Compensated Employee under this section for a Plan Year shall be reduced by "Excess Deferral Amounts" previously distributed to the Highly Compensated Employee for the taxable year of such Highly Compensated Employee ending during the Plan Year. Furthermore, the amount of any Deferred Deposit distributed under this section must include the income attributable thereto. For Plan Years ending prior to January 1, 2006 or beginning on or after January 1, 2008, in no event shall the distribution include income attributable to any period after the end of the Plan Year for which the Deferred Deposit was made. The Committee shall determine the extent to which any Deferred Deposit to be distributed is composed of Deferred Deposits other than Roth Elective Deferrals and the extent to which the Deferred Deposit to be distributed is composed of Roth Elective Deferrals, in accordance with administrative procedures applied uniformly to all Participants.

(e) Should the Committee determine during the course of any Plan Year that the nondiscrimination test of Code section 401(k) might not be met for such Plan Year, the Committee may reduce, at any time, the percentage of Deferred Deposits that a Highly Compensated Employee may elect to have contributed to the Plan in accordance with this Article IV to a percentage that the Committee determines appropriate to ensure that the test shall be met for the Plan Year.

(f) Notwithstanding any provision above, in running the actual deferral percentage test under this Section 4.8 the Committee may utilize any of the testing alternatives permitted under Code section 401(k) and Treasury Regulation section 1.401(k)-2.

(g) *Special Testing Provisions:*

(1) For purposes of this Section 4.8, the actual deferral percentage of a Highly Compensated Employee who is eligible for Deferred Deposits or similar employer contributions under two or more plans described in Code section 401(k) that are maintained by the Company or an Affiliate shall be determined as if all such contributions were made under a single Plan, except as otherwise provided in regulations under Code section 401(k).

(2) For purposes of this Section 4.8, actual deferral percentages shall be determined by considering all applicable contributions made under any other plans that are aggregated with this Plan for purposes of Code sections 401(a)(4) and 410(b). If other plans are permissively aggregated with this Plan for purposes of Code section 401(k), the aggregated plans must satisfy Code sections 401(a)(4) and 410(b) as if they constituted a single plan.

(3) For purposes of this Section 4.8, the actual deferral percentage test shall be performed after application of the mandatory disaggregation rules of Code section 410(b). Notwithstanding the preceding sentence, two or more separate collective bargaining units may be treated as a single collective bargaining unit for purposes of such test if the combination of units is determined on a basis that is reasonable and reasonably consistent from year to year.

Section 4.9. Unmatched Employer Contributions. If, as the result of the operation of Sections 4.6, 4.7, and/or 4.8, and before the operation of Section 4.10, the combined Deposits of a Participant are adjusted in such a way that Employer Contributions previously made on behalf of a Participant for a Plan Year are no longer matched by such Participant's Basic Deposits, then the matching Employer Contributions allocated to such Participant's Account for such Plan Year shall be reduced, under nondiscriminatory rules established by the Committee, to the extent necessary to equal the percentage of Employer Contributions (as set forth in Article V) with respect to the Participant's remaining Basic Deposits for such Plan Year. The amount, if any, of previously allocated Employer Contributions in excess of the percentage of Employer Contributions (as set forth in Article V) of the Participant's remaining Basic Deposits shall be forfeited and applied to reduce future Employer Contributions to the Plan.

Section 4.10. Changing Deposit Percentages. The percentage of Compensation deposited in the Plan by or on behalf of an Active Participant shall continue in effect until such Active Participant shall change the rate of such Deposits. An Active Participant may change the rate of Deposits to a higher or lower percentage of Compensation within the limitations of Sections 4.1, 4.2 and 4.6 by arranging for such change with the Record Keeper or as otherwise prescribed by the Committee. Any such change shall become effective as soon as practicable after receipt of the notice of change by the Record Keeper. Effective January 1, 2008, an Active Participant may make

an election to automatically increase his or her rate of Deposits each year, but no higher than 8% of the Active Participant's Compensation. Any such election shall be effective as of a date designated by the Committee and shall be made by giving notice of election in the manner prescribed by the Committee.

Section 4.11. Suspension of Deposits.

An Active Participant may suspend all of the Deposits to the Plan made by such Participant or on his or her behalf at any time by arranging for such suspension with the Record Keeper or as otherwise prescribed by the Committee. Such suspension shall be effective as soon as practicable after receipt of the notice of suspension by the Record Keeper, and shall continue until such Participant elects to have Deposits resumed by arranging therefor with the Record Keeper. Payroll deductions under the Plan shall begin again as soon as practicable after such notice is received by the Record Keeper.

(a) If, after other required and authorized deductions from an Active Participant's pay, there is not sufficient money available in any pay period to make the entire authorized payroll deduction for such Participant's Nondeferred Deposits, no payroll deduction shall be made therefor for that pay period.

(b) In case of any such total suspension of Deposits, pursuant to subsection (a), Employer Contributions on behalf of such Participant shall be automatically suspended for a like period.

Section 4.12. Limit on Additional Lump Sum Deposits. No further Additional Lump Sum Deposits may be made by any Participant in any Plan Year in which the aggregate amount of all of such Participant's Deposits under the Plan exceeds 50% of such Participant's Compensation for that Plan Year. Any Additional Lump Sum Deposits inadvertently received in excess of this limitation shall be refunded to the Participant as soon as practicable following determination of such excess.

Section 4.13. Elections. All elections under this Article IV shall be made at the time, in the manner and subject to the conditions as are specified by the Committee. Elections of Deferred Deposits shall in all cases be irrevocably made prior to the beginning of the payroll period for which such elections shall apply. In any year in which the Committee deems it necessary to do so to meet the requirements of Section 4.6, 4.8, 4.10 or 5.4 of the Code and the regulations thereunder, the Committee may reduce, for that Plan Year, the permissible amount of Deposits by or on behalf of any or all Active Participants.

Section 4.14. Rollover Contributions.

Subject to such rules as may be established by the Committee, an Eligible Employee may transfer Rollover Contributions (as defined in Section 2.42) to the Plan, to be deposited in his or her Supplemental Deposit Account. The Eligible Employee must certify that such amount to be transferred as a Rollover Contribution qualifies for such transfer under the Code and regulations thereunder and must submit such information or evidence, satisfactory to the Committee that it may require in order to approve such transfer. In addition, Rollover Contributions shall then be subject to all terms and conditions of this Plan and the Trust Agreement and shall be treated in the same manner as Supplemental Deposits, unless the context of the Plan or Trust requires otherwise.

(a) In the event that the Plan accepts a Rollover Contribution from an Eligible Employee that includes an amount that the Committee later determines is an "invalid rollover contribution" (as defined below), the amount of the invalid rollover contribution, plus any earnings attributable thereto, shall be distributed to the Eligible Employee as soon as practicable after such determination.

(b) An "invalid rollover contribution" is an amount that is not an eligible Rollover Contribution, as described in subsection (a) above, or that does not satisfy the other requirements of Code section 401(a)(31), Code section 402(c), or Code section 408(d)(3) for treatment as a rollover or a rollover contribution.

Section 4.15. Transfers from the Thrift Plan. Any Eligible Employee who, at the time he or she becomes employed by the Company or a Participating Affiliate, is a participant in the Thrift Plan, shall automatically be enrolled in the

Plan, and all balances in the Thrift Plan shall be transferred to the Plan. Upon the transfer of Employee whose terms of employment is not covered by a collectively bargaining agreement to a position where his or her terms of employment is covered by a collectively bargaining agreement and he or she become an

Eligible Employee in this Plan, such Eligible Employee's account under the Thrift Plan shall transfer to this Plan. All contribution and investment elections in effect for the Thrift Plan shall remain in effect, subject to change pursuant to the operation of Sections 4.11, 4.12 and 6.2 hereof.

Section 4.16. Qualified Military Service. Notwithstanding any provision in this Plan to the contrary, effective December 12, 1994, a Participant who is or was engaged in "qualified military service," as that term is defined in Code section 414(u), shall be permitted to make additional Basic Deposits, Supplemental Deposits, and Additional Lump Sum Deposits in accordance with this Article IV and in an amount as determined under Code section 414(u). Under no circumstances shall the Deposits provided for in this Section 4.17 exceed the amount the Participant would have been permitted to contribute had such Participant remained continuously employed by the Employer throughout the period of qualified military service.

ARTICLE V EMPLOYER CONTRIBUTIONS

Section 5.1. Amount and Payment of Employer Contributions. Each Employer shall contribute to the Plan on behalf of Participants who are Eligible Employees, who have completed a Year of Service, and who are making or having their Employer make on their behalf Basic Deposits to the Plan an amount equal to 50% of the aggregate of such Basic Deposits, except to the extent that such Basic Deposits are reduced or distributed as provided in Sections 4.6 through 4.19, and except as provided in this Article V and in Section 11.4.

Provided, however, that, effective for the first payroll period beginning after January 10, 2010:

No Employer Contributions shall be made with respect to Participants who are (a) included within a unit of employees covered by a collective bargaining agreement with United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry (UA) Local No. 855 and (b) also participants in the Pension Plan; and Employer Contributions with respect to Participants who are (a) included within a unit of employees covered by a collective bargaining agreement with International Brotherhood of Electrical Workers Local Union 94, International Brotherhood of Electrical Workers Local Union 97, Office Professional Employees International Union Local 153, and the Utility Workers Union of America (UWUA) Local 470-1 and (b) also participants in the Pension Plan shall be limited to 25% of Basic Deposits.

Notwithstanding the foregoing, effective from the first payroll period beginning after December 31, 2010, Employer Contributions with respect to Participants who are (a) included within a unit of employees covered by a collective bargaining agreement with International Brotherhood of Electrical Workers Local Union 94, International Brotherhood of Electrical Workers Local Union 97, Office Professional Employees International Union Local 153, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitters Industry (UA) Local No. 855 and the Utility Workers Union of America (UWUA) Local 470-1, and (b) also participants in the Pension Plan shall be equal to 50% of the aggregate of their Basic Deposits.

Notwithstanding the foregoing, effective from the first payroll period beginning after December 31, 2011, Employer Contributions with respect to Participants in units of employees represented by Utility Workers Union of America (UWUA) Local 601 shall be equal to 25% of the aggregate of their Basic Deposits. Effective from the first payroll period beginning after December 31, 2012, Employer Contributions with respect to Participants in units of employees represented by Utility Workers Union of America (UWUA) Local 601 shall be equal to 50% of the aggregate of their Basic Deposits.

Basic Deposits of an Eligible Employee's before-tax Compensation shall be matched before Basic Deposits of an Eligible Employee's after-tax Compensation.

Employer Contributions with respect to a Plan Year shall be paid to the Trustee not later than the due date (including extensions of time) for filing the Company's consolidated Federal income tax return for such year. All Employer Contributions may be made without regard to current or accumulated earnings of the Employer. Notwithstanding the foregoing, the Plan shall be designated a profit sharing plan for purposes of Code sections 401(a), 402, 412 and 417, except with respect to balances held in the Company Common Stock Fund.

Section 5.2. Employer Contributions in Company Common Stock. For periods prior to February 1, 2002, Employer Contributions with respect to Basic Deposits in excess of 5% of Compensation for Participants who were employed by an Employer other than CEA Newark Bay Services, Inc. were made in shares of Company Common Stock and Employer Contributions with respect to Basic Deposits in excess of 6% of Compensation for Participants who were employed by CEA Newark Bay Services, Inc. were made in shares of Company Common Stock. Effective as of February 1, 2002, Employer Contributions are made solely in accordance with Section 5.1 above. In addition, effective as of February 1, 2002, with respect to Employer Contributions made in shares of Company Common Stock prior to February 1, 2002 and in accordance with this Section 5.2, such shares may be transferred to any of the available Funds established pursuant to Section 7.1.

Section 5.3. Reduction of Employer Contributions by Forfeitures. The amount of an Employer's Contribution shall be reduced by the amount of the reduction of an unmatched Employer Contribution allocable to a Highly Compensated Employee as provided in Sections 4.8, and 4.9, by the amount of any forfeiture as a result of termination of the employment of an Active Participant as provided in Section 11.2, or as a result of the Employer's inability to locate a Participant or beneficiary to whom a benefit hereunder is due as provided in Section 11.14.

Section 5.4. Maximum Annual Additions. The maximum Annual Addition, as defined in Section 12.1, for any Plan Year to any Participant's Account may not exceed the amount provided for by Code section 415(c). The rules governing the application of this Section 5.4 and other limitations imposed by Code section 415 are more fully set forth in Article XII.

Section 5.5. Return of Employer Contributions.

Notwithstanding any provision of the Plan to the contrary, any Employer Contribution made to the Plan by reason of mistake of fact may be returned to the Employer making such Employer Contribution, provided the return of

(a) such Employer Contribution is made within one year from the date the mistaken payment was made, and any amount so returned shall be disposed of as the Committee shall direct.

If the Internal Revenue Service determines that any contribution by an Employer to the Plan is not deductible under Code section 404, such Employer shall have the option, which it may exercise within one year after the date of the

(b) disallowance of such deduction, to have such contribution returned to the Employer, and any amount so returned shall be disposed of as the Committee shall direct.

Section 5.6. Allocation from Cash Balance Plan. Pursuant to the Cash Balance Plan and the Retirement Choice Program, Participants who so elect may have certain service and age points otherwise allocated to them under the Cash Balance Plan made as an Employer Contribution to their Accounts under this Plan. All amounts so elected shall be accepted by the Trustee and invested in accordance with Section 6.1. No amounts attributable to Employer Contributions resulting from Participant elections made pursuant to the Cash Balance Plan and the Retirement Choice Program shall be available for withdrawal from the Plan until the Participant's termination of employment by the Company or any Affiliate.

Section 5.7. Qualified Military Service. Notwithstanding any provision in this Plan to the contrary, effective December 12, 1994, the Employer shall contribute to the Plan on behalf of a Participant who is or was engaged in "qualified military service," as that term is defined in Code section 414(u), and who makes or is having made additional

Basic Deposits to the Plan under Section 4.17 on his or her behalf, the amount of Employer Contributions as required under this Article V and Code section 414(u) with respect to such additional Basic Deposits. In addition, a Participant who is or was engaged in qualified military service shall be entitled to make the election provided for in Section 5.6 of this Plan, if applicable, for the period set forth in Code section 414(u).

ARTICLE VI
SAVINGS ACCOUNT AND ROTH ACCOUNT INVESTMENTS

Section 6.1. Investment of Deposits, Rollover Contributions and Employer Contributions. Deposits, Rollover Contributions and Employer Contributions to the Plan shall be invested by the Trustee under the Trust Agreement in the Funds established pursuant to Section 7.1. Upon enrolling in the Plan, each Participant shall specify, in such manner as shall be prescribed by the Committee, the percentage (which shall be an integral multiple of 1% — including 0% but not exceeding 100% in the aggregate) of Deposits to his or her Savings Account and Roth Account which shall be invested in each of such Funds. Employer Contributions shall be invested by the Trustee for the Account of an Active Participant in the same Funds and in the same percentages as directed by such Participant with respect to the Basic Deposits to his or her Savings Account. Rollover Contributions may be invested in Funds under the Plan in such dollar amounts as shall be designated by the Participant. Notwithstanding anything to the contrary herein, a Participant who, at the time he or she becomes an Eligible Employee, is a participant in the Thrift Plan, shall continue the same investment elections as he or she maintained in the Thrift Plan until a change in investment direction is made in conformity with Section 6.2 hereof.

Section 6.2. Change in Investment Direction. Any investment direction given by a Participant under Section 6.1 or automatic investment under Section 6.8 shall continue in effect until changed by the Participant. A Participant may change any such direction by giving notice of such change in the manner prescribed by the Committee. Any such change shall become effective as soon as practicable after receipt of the notice of change by the Record Keeper. A change in investment direction under this Section 6.2 shall not automatically cause a transfer of investments under Section 6.3.

Section 6.3. Transfer/Reallocation of Investments. Subject to Section 6.6 regarding transfers into and out of the Personal Choice Retirement Account Fund and Section 9.3 regarding transfers out of the Frozen ESOP Account, a Participant may:

- direct that all or any part (in integral multiples of 1%) of his or her interest in any one or more of the Funds be transferred to any one or more of the other Funds, except that no transfer may be made into a Participant's Frozen ESOP Account. A Participant may also transfer his or her Frozen ESOP Account assets (in integral multiples of 1%, but not exceeding 100% in the aggregate) into any one or several of the Funds. However, any transfer from a
- (a) Fund shall be subject to such contractual limitations regarding transfers from such Fund as may exist from time to time under the contracts governing investments held in such Fund. A direction to transfer all or a portion of a Participant's interest in a Fund shall be made by giving notice in the form prescribed by the Committee. Subject to any contractual limitations that may be applicable, any such transfer shall be made as soon as practicable after receipt of the notice of such transfer by the Record Keeper; or
- reallocate all or any part (in integral multiples of 1%) of his or her interest among the Funds, except that no funds may be reallocated into or out of a Participant's Frozen ESOP Account. Any such reallocation shall be subject to such contractual limitations as may exist from time to time under the contracts governing investments held in such
- (b) Funds. A direction to reallocate a portion of a Participant's interest in a Fund shall be made by giving notice in the form prescribed by the Committee. Subject to any contractual limitations that may be applicable, any such reallocation shall be made as soon as practicable after receipt of the notice of such reallocation by the Record Keeper.

Section 6.4. Quarterly Automatic Rebalancing. Excluding investments in the Participant's Frozen ESOP Account and in the Personal Choice Retirement Account Fund, a Participant may elect to automatically rebalance his or her Account among some or all of the Funds at the end of each calendar quarter. Any such rebalancing shall also be subject to those contractual limitations regarding transfers from certain Funds as may exist from time to time under the contracts governing investments held in such Funds. A direction to elect quarterly automatic rebalancing of a

Participant's Account shall be made by giving notice in the form prescribed by the Committee and shall be in effect until an election is made to discontinue such rebalancing. Subject to any applicable contractual limitations, such rebalancing shall commence as soon as practicable after the Record Keeper's receipt of the notice of such election and shall occur on, or as soon as practicable following, the end of each subsequent calendar quarter.

Section 6.5. Loans

Participants may receive loans from their Savings Accounts and Roth Accounts under the provisions of Section 11.13. A loan to a Participant shall be considered an investment of such Participant's Savings Account and Roth Account, and the principal amount of the loan shall be treated as a separate investment within the Accounts and (a) subaccounts. Repayments of the principal amount of the loan shall reduce such corresponding investments of each such Account and subaccount in the inverse order of such investment and repayments of such principal along with any accrued interest thereon shall be invested in the Funds in accordance with the Participant's then current investment direction. Loan amounts shall be taken from Accounts in the following order:

- (1) Roth Elective Deferrals;
- (2) Deferred Deposits other than Roth Elective Deferrals;
- (3) Unmatured vested Employer Contributions;
- (4) Matured vested Employer Contributions;
- (5) Rollover Contributions;
- (6) Unmatured Post-1986 Nondeferred Deposits;
- (7) Matured Post-1986 Nondeferred Deposits;