Agenda Date: 6/18/12
Agenda Item: 2H

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF NEW JERSEY NATURAL GAS COMPANY'S FOSTERING ENVIRONMENTAL AND ECONOMIC DEVELOPMENT PROGRAM TARIFF SERVICES AND THE WALTER R. EARLE CORPORATION	)	ORDER APPROVING CONTRACT DOCKET NO. GO12030223

APPEARANCES:

Tracey Thayer, Esq., New Jersey Natural Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Order the New Jersey Board of Public Utilities ("Board") considers a request by New Jersey Natural Gas Company ("NJNG" or the "Company") for approval of a three-year fixed price natural gas commodity contract ("Contract") between NJNG and the Walter R. Earle Corporation ("Earle") under the company's Fostering Environmental and Economic Development Service tariff.

BACKROUND

By Order dated September 24, 2010, the Board approved a stipulation in Docket No. GO10030225[1] that authorized NJNG to offer several energy efficiency programs. As one of those programs, NJNG was authorized to offer the Fostering Environmental and Economic Development Program ("FEED") for a three year period effective January 1, 2011, including the following: FEED Class 1 – Incentive or discount rates for natural gas service to encourage environmental or economic benefit; FEED Class 2 – Special Developmental Rates designed to recover from the customer any capital investment made by NJNG, along with fees, expenses, costs, other charges and a return on the Company's investment, over the duration or the

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[1] In the Matter of the Petition of New Jersey Natural Gas Company for Approval of Regional Greenhouse Gas Initiative Programs and Associated Cost Recovery Mechanisms Pursuant to N.J.S.A. 48:3-98.1.

contract related to distribution system and main expansions; and, FEED Class 3 – Special Developmental Rates designed to encourage significant, new and/or environmental or economic development projects in NJNG's service territory through investments associated with the installation and/or operation by the Company of non-traditional equipment and facilities. To qualify, an interested commercial or industrial customer must fit into one or more of the following categories: 1) be a new customer intending to use natural gas to provide significant environmental or economic benefits in the NJNG service territory or in a manner that increases system utilization for NJNG; 2) be an existing customer who materially expands the use of natural gas; or 3) be an existing customer with a project that provides significant environmental or economic benefits in the NJNG service territory or significantly increases system utilization for NJNG.

The Company will recover from the customer the capital investment fees, expenses, costs, other charges, along with a return on the investment. According to the Company, these investments will not be included in NJNG's rate base.

Requests related to any potential FEED project are submitted to the Board Staff and Rate Counsel for a 60-day review and comment period. FEED Class I contracts must be submitted to the Board for approval prior to implementation.

On March 13, 2012, NJNG petitioned the Board for approval of a three-year fixed price natural gas commodity contract with Earle pursuant to NJNG's FEED tariff. According to NJNG, the Contract is a FEED Class I application, and the operations at Earle meet the criteria set forth within the tariff since Earle is an existing natural gas customer significantly expanding its use of natural gas, and is also proceeding with a project that the Company represents will provide both environmental and economic benefits within its service territory.

Earle is an asphalt manufacturing company located in Jackson, New Jersey. The company specializes in private and municipal road construction, paving and highway construction, as well as the manufacturing, recycling and transportation of construction related materials. Earle has made the commitment to convert from the use of waste oil and #2 oil to the use of natural gas for manufacturing purposes. NJNG states that the agreement between NJNG and Earle relates only to charges for the natural gas consumed at the Earle location and the service installation was completed in accordance with the current NJNG Board-approved Tariff for main extensions.

If approved, under the terms of the Contract, NJNG will provide Firm Transportation ("FT") delivery service and fixed commodity pricing for natural gas service for three years. The Contract covers volumes of natural gas service used for manufacturing and heating purposes. According to the petition, Earle anticipates that approximately 1,565,140 therms will initially be needed on an annual basis to meet Earle's needs. If Earle requires additional volumes for its manufacturing needs or any other reason, Earle may request a fixed price from NJNG for the additional volumes. NJNG shall determine the fixed price for natural gas for the additional volumes in the same manner as specified in Article IV of the Contract as of the time of the request.

As stated in the Contract, a fixed price will be paid for natural gas service. The price will be determined at a mutually-agreed upon date following Board approval of the Contract. The price for natural gas shall be the weighted average, based on Earle's monthly contract volumes, of the monthly market based prices for natural gas at delivery location Texas Eastern M3 ("Tetco M3") for the term of the Contract, along with related costs in securing the fixed price supply through market transactions (hedging costs). The resulting price will be adjusted for all applicable taxes, assessments or surcharges and carried out to the fourth decimal place. Earle will also be responsible for all generally applicable delivery and meter-related rates and charges for Service Classification FT, as set forth in the NJNG Tariff and as that document may be legally changed or modified going forward. NJNG will bill Earle on a monthly basis for the previous month's natural gas fixed volumes as specified in the Contract. All revenues from the fixed price for natural gas in the Contract will be credited to NJNG's Basic Gas Supply Service ("BGSS").

NJNG states that imbalances in the volumes of gas purchased for use by Earle at the fixed price and the volumes of gas used by Earle will be cashed-out after the end of each month. If the monthly imbalance is negative (more gas was used than purchased at the fixed price), Earle will be charged for the incremental volume purchased above the volume of gas purchased at the fixed price at the highest weekly index price for Tetco M3, as set forth in any edition of *Natural Gas Week's "Natural Gas Weekly Spot Prices"* issued for the calendar month flow dates. If the monthly imbalance is positive (the volume of gas purchased for Earle at the fixed price is greater than the amount of gas used by Earle), Earle will receive a credit for a positive imbalance less than or equal to 25 percent at the fixed price for natural gas under the Contract and applied to the imbalance. Earle will not receive a credit for any positive imbalance level greater than 25 percent of the fixed priced volumes. All revenues and purchases derived from imbalances will be accounted for in NJNG's BGSS.

According to NJNG, the Contract does not impose any additional costs on NJNG's other customers. The Company will hedge the volume of gas requested for use by Earle. Under certain circumstances of up to a 25 percent reduction in utilization of the Contract volume, other customers will be affected in that they will be purchasing this imbalance volume at the fixed contract price. NJNG represents that this will be *de-minimus*. According to NJNG, this is similar to NJNG hedging that volume for BGSS customers and providing long-term price stability.

NJNG states that, since this is a FEED Class I proposal, there are no infrastructure costs associated with the Contract. The special arrangement is for a FEED incentive associated with the Contract for a fixed volume of natural gas.

Rate Counsel filed comments with the Board on May 14, 2012 stating its concerns about the Contract. According to Rate Counsel, as filed, the Contract does not contain the equivalent of Special Provision 3 of Rate Marketers and Brokers Requirements ("MBR") under the Company's FT tariff for transportation customers, which allows NJNG to retain 2% of a transportation customer's deliveries to cover fuel (compressor) use and unaccounted for gas (line loss). Rate Counsel further states that during conferences with Rate Counsel, NJNG, and Staff (the "Parties"), NJNG stated that Earle has agreed to a 2% retainage clause and the Company intends to submit a revised (or amended) contract that includes a 2% retainage clause for Board approval. Rate Counsel recommended that the Board condition any approval of the Contract upon the inclusion of contract provisions which subject Earle to the 2% retainage.

Rate Counsel's comments also included a concern about the treatment of gas delivery imbalances. However, based on NJNG's representations that the volumes of gas for Earle are *de minimus* compared to total BGSS purchases and that the potential impact of any positive FEED imbalances on BGSS customers would not be measurable, Rate Counsel is not objecting at this time. Rate Counsel understands that the Company will separately account for any imbalances, and these amounts would be subject to review in subsequent BGSS proceedings, among other items. Given these representations, Rate Counsel finds that the cash-out provisions contained in the Contract provide sufficient protection for BGSS customers. Additionally, Rate Counsel reserves the right to review the impact of the Contract on other NJNG ratepayers in the course of its review of the Company's BGSS filings and any other proceedings where supply costs and cost recovery are addressed.

By letter dated June 5, 2012, NJNG agrees to the additional provisions in Rate Counsel's letter and stated that it will comply with them. First, the Company states that the FEED contracts pending approval have been modified, and contain language about a 2 percent retainage obligation. The Company further states that it will send copies of the fully executed contracts to all parties on the service list once they are available. Second, NJNG agrees that any imbalances related to the cash-out provisions in the Earle contract will be accounted for separately, and are subject to review in subsequent proceedings related to NJNG's BGSS.

DISCUSSION AND FINDING

The Board, having reviewed the proposed contract between NJNG and Earle and comments submitted by Rate Counsel, **HEREBY FINDS** that subject to the modifications listed below, the proposed Contract is reasonable and consistent with the intent of the FEED tariff by providing a special rate to encourage development within the Company's service territory. Reasonable protections of BGSS customers have been established in the proposed Contract that reflect the operational complexity associated with the balancing of natural gas supplies. Although the balancing provisions in the Contract may be unique to the specifics of the service provided to Earle, they were established with the same intent as those balancing provisions for BGSS customers, namely to prevent impacts on other NJNG customers. The Parties retain their rights to review any impacts on other NJNG customers within appropriate rate proceedings.

Therefore, the Board **HEREBY CONDITIONALLY APPROVES** the proposed Contract to be effective for a three year term provided that the Contract will be modified to include provisions which subject Earle to the 2% retainage clause, and with the Company's representation regarding the treatment of gas delivery imbalances as discussed in Rate Counsel's May 14, 2012 comments to the Board.

NJNG is **HEREBY ORDERED** to file an amended contract in compliance with this Order. No contract shall be effective until the Board has received the modified Contract, and Staff has notified the Parties that its review finds the Contract in compliance with this Order.

The Company's gas costs remain subject to audit. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

DATED: 6/18/12

BOARD OF PUBLIC UTILITIES
BY:

ROBERT M. HANNA
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

In the Matter of New Jersey Natural Gas Company's Fostering Environmental and Economic Development Program Tariff Services and the Walter R. Earle Corporation
DOCKET NO. GO12030223

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