



Agenda Date: 3/18/15
Agenda Item: 2D

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 THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY FOR A) ORDER
SECOND AMENDMENT OF LEASE TO KINDER)
MORGAN LIQUID TERMINALS, LLC WITH WAIVER) DOCKET NO. GM13111080

Parties of Record:

David K. Richter, Esq., on behalf of Petitioner, Public Service Electric and Gas Company
Stefanie A. Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD¹:

By petition filed on November 13, 2013, Public Service Electric and Gas Company ("PSE&G" or "Company") is seeking approval of a second amendment ("Amendment") to its lease agreement ("Agreement") with Kinder Morgan Corporation ("Kinder") to operate and transport light oils through a wholly owned PSE&G twelve-inch steel pipe ("the Pipe") and associated Rights-of-Way ("ROW") in the Township of Carteret, County of Middlesex, and the City of Linden, County of Union. The rental price under the proposed Amendment is \$331,500.00 annually with a 2% increase in the rental in each year of the four (4) one year options. Kinder notified PSE&G that it would like to extend the Agreement beyond the current end date of December 31, 2014 for two (2) additional years through December 31, 2016.

The Pipe was acquired by PSE&G in 1975, and was operated by the Company along the ROW it had procured by easement to transport naphtha, a petroleum product. The Pipe was retired by PSE&G in 1989, and subsequently leased to Kinder, as successor to GATX Terminals Corporation, under the Agreement as approved by the Board Order dated July 19, 1994 (Docket No. GM93120531). Thereafter, the Agreement was amended by a First Amendment of Lease dated December 28, 2010 and approved by Board Order dated November 30, 2011.²

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

² In re the Petition of Public Service Electric and Gas co. For Approval of a An Amendment of Lease Agreement To Operate and Transport Light Oils Through a Wholly Owned PSE&G Twelve Inch Steel Pipe in the Cities of Carteret, County of Middlesex, and Linden, County of Union, to Kinder Morgan Corp, a Delaware Corp. For the Sum of 325,000.00 per Year, Docket no. GM11030190 (Order dated November 30, 2011).

In its petition, the Company stated that the key terms of the Amendment to the Agreement include: (1) the lease was restructured as a one (1) year extension to the Agreement with four one year extension options;³ and 2) the rental amount was renegotiated as an annual increase to the correct rental amount. Under the terms of the proposed Amendment, Kinder will pay PSE&G an annual amount of \$331,500.00 with a 2% increase in the rental each year of the four one year options, if exercised. According to the Company, the rental amount exceeds the fair market rental value as set forth in the appraisal dated September 24, 2013, and PSE&G is no longer responsible for the annual inspection and maintenance of the Pipe. The Company asserts that the proposed Amendment to the Agreement will not compromise PSE&G's ability to provide safe, adequate and reliable service as the Pipe has not been used, and has not been useful to PSE&G since 1989, and has been leased to Kinder Morgan since 1994.

The Company requested the Board grant a waiver of the requirement to advertise the property pursuant to N.J.A.C. 14:1-5.6 (i)7 since the waiver shall not adversely affect the public interest because: (1) PSE&G is only seeking to amend an currently existing lease; (2) the Pipe is no longer used and useful for utility purposes; (3) there is no other prospective use for the Pipe for utility purposes other than the prospective tenant who has been the tenant since 1994; (4) the rental price exceeds the fair market value; (5) there is no relationship between the Company and Kinder; (6) there are only limited users for the Pipe; and (7) advertising and bidding would likely not result in a higher rental price. As of September 2014, Kinder informed PSE&G that it would like to extend the Agreement beyond the current end date of December 31, 2014 for two additional years through December 31, 2016. The new escalated annual rental amount would be \$338,130.00 for the year 2015 and \$334,893.00 for the year 2016.⁴ The Company has further indicated that the revenues received from Kinder will be deposited into PSE&G's Gas Utility "Account No. 495 -Other Gas Revenues" which is included in their total Gas Operating Revenues and will be treated above the line for ratemaking purposes.

In its comments submitted to the Board dated March 2, 2015, the New Jersey Division of Rate Counsel ("Rate Counsel") stated that it does not object to waiving the advertising requirement for the lease, and does not object to the Amendment as the rental appears to reflect the fair market value of the property as noted in the 2013 appraisal, and the Amendment provides PSE&G with an added measure of liability indemnification. Rate Counsel recognizes that PSE&G will continue to be relieved of inspection and maintenance responsibilities for the Pipe. Rate Counsel recommends that any Order approving the Amendment should contain conditions similar to those included in the Board's October 30, 2011 Order approving the first amendment to the Agreement. Additionally, Rate Counsel recommends that PSE&G be required to submit an analysis of whether the Pipe should be sold for the benefit of ratepayers at the end of the term of the Amendment.

DISCUSSION AND FINDINGS

The Board notes that this matter presents unique circumstances, including the restrictive attributes of the property. The Pipe has been leased since 1994, and has limited value to anyone other than Kinder. As all other requirements of N.J.A.C. 14:1-5.6 have been satisfied,

³ Copy of Amendment

⁴ Letter from Kinder to PSE&G dated September 25, 2014.

the Board **HEREBY FINDS** that a waiver of the advertising requirement will not adversely affect the public interest.

The Board further notes that the Pipe is no longer used and useful for utility purposes. However, because PSE&G's natural gas customers paid for the Pipe, they should benefit from revenues derived from the lease. The annual rental amount under the Second Amendment is reasonable because it exceeds the fair market rental value recommended in the appraisal submitted with the petition. Moreover, according to the Company, the revenues associated with the lease will continue to be treated above the line for ratemaking purposes. Revenues resulting from this Amendment should be reviewed in the Company's next base rate case to ensure that an appropriate level of revenues is reflected above the line for the benefit of PSE&G's natural gas ratepayers.

The Board further notes that the Amendment has sufficient language to protect PSE&G from claims, suits, judgments, damages, losses including environmental liabilities or other liability of any nature arising out of or related to the use and operation of the Pipe by Kinder, its employees, agents or contractors. Additionally, Kinder will be responsible for maintaining the Pipe in accordance with Pipeline and Hazardous Materials Safety Administration's new regulations, Department of Transportation part 195.

After review of the entire record in this matter, the Board **HEREBY FINDS** that the proposed Amendment: (1) will not adversely affect the public interest; (2) will not affect PSE&G's ability to provide safe, adequate, and reliable utility service to its customers; and (3) is in compliance with all applicable statutes and regulations.

Accordingly, the Board **HEREBY GRANTS** the request for a waiver of the advertisement requirements and **APPROVES** the Amendment to the Agreement. Further, the Board **HEREBY DIRECTS** that the level of rental revenues shall be reviewed in the Company's next base rate proceeding to ensure that an appropriate level of revenues continues to be reflected above the line for the benefit of PSE&G's natural gas customers. If the Agreement expires before the Company files next base rate case, six months prior to the expiration the Company shall submit an analysis of whether the Pipe should be sold for the benefit of its ratepayers after expiration.

Additionally, the Board **HEREBY DIRECTS** PSE&G to submit to the Board's Bureau of Pipeline Safety:

1. A written certification regarding inspections and maintenance performed on the Pipe within ten (10) days of same being performed;
2. A copy of the Kinder Pipeline Integrity Plan; and
3. Reports of all tests, assessments, modifications, improvements, and relocations.

Additionally, PSE&G is **HEREBY DIRECTED** to inform the Board immediately upon learning of any spill or leakage of pipeline product, any hazardous situation, or any situation that may compromise the safe operation of the Pipe.

The approval of this Amendment is the second modification of the Board's 1996 Order. All other terms and conditions not specifically modified by approval of the Amendment remain as set out in the prior Order, and shall remain unchanged and in full force and effect unless subsequently modified by the Board.

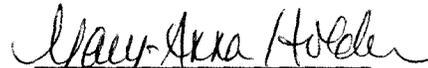
The effective date of this Order is March 27, 2015.

DATED: 3/18/15

BOARD OF PUBLIC UTILITIES
BY:

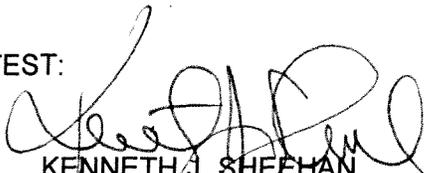

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

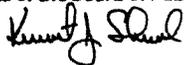

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


KENNETH J. SHEEHAN
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 THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
FOR SECOND AMENDMENT OF LEASE TO KINDER MORGAN LIQUID TERMINALS LLC
WITH WAIVER

DOCKET NO. GM13111080

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