



Agenda Date: 3/26/18
Agenda Item: 2G

STATE OF NEW JERSEY
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE NEW JERSEY BOARD OF
PUBLIC UTILITIES' CONSIDERATION OF THE TAX
CUTS AND JOBS ACT OF 2017

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ORDER

DOCKET NOS. AX18010001

AND

DOCKET NO. GR18030232

(SERVICE LIST ATTACHED)

Parties of Record:

Mary Patricia Keefe, Esq. for Elizabethtown Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Fox Rothschild, LLP, on behalf of New Jersey Large Energy Users Coalition

BY THE BOARD:

This Board Order addresses the interim rate changes to be effective April 1, 2018 that are proposed in the petition filed by Elizabethtown Gas ("ETG" or "Company") in response to an order issued by the New Jersey Board of Public Utilities' ("Board") on January 31, 2018 ("January 31, 2018 Order")¹, directing the affected utilities² to file petitions proposing new rates reflecting the impacts from the Federal Tax Cuts and Jobs Act signed into law on December 22, 2017 (the "2017 Act").

¹ See In re the New Jersey Board of Public Utilities Consideration of the Tax Cuts and Jobs Act of 2017, BPU Docket No. AX18010001 (Order dated January 31, 2018).

² The affected utilities are investor owned gas, electric, water and wastewater companies under the jurisdiction of the Board. In addition, affected utilities shall be those with 2017 revenues equal to or greater than \$4.5 million.

BACKGROUND

The effective date of the 2017 Act is January 1, 2018. The 2017 Act sets forth changes to the Federal Internal Revenue Tax Code ("Tax Code"), including a reduction in the maximum corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). The Board is charged with the authority to ensure that the regulated utilities' rates charged to ratepayers are just and reasonable. When the Board sets rates in base rate cases and in certain annual/periodic clauses, utilities are permitted to gross up their revenue requirement as well as set other rate factors, including, the accumulated deferred income tax, based on the then existing thirty-five percent (35%) corporate tax rate.

The Board issued the January 31, 2018 Order which set all affected utility rates as interim and established a proceeding to consider the implications of the 2017 Act. Based upon the Board's review of the 2017 Act, the Board found in its January 31, 2018 Order that the changes to the Tax Code will provide savings to the affected utilities and will result in an over-collection of tax revenue by the affected utilities that will not be paid in federal income taxes. The affected utilities were required to file amended tariffs reflecting a reduction in rates resulting from the reduction in the corporate tax rate effective April 1, 2018, as well as a plan to address other rate factors and to refund any over collection in rates.

On March 2, 2018, the Company filed its Petition pursuant to the January 31, 2018 Order, including proposed tariffs as well as a proposed plan. Based on the 2017 Tax Act, the Company proposed to implement a \$10,938,818 annual reduction in firm distribution revenues, effective April 1, 2018, which represents a 6.6% decrease. Additionally, ETG proposed to refund customers the difference between the effective April 1, 2018 rate and charges for January 1, 2018 through March 31, 2018. This is estimated to be \$5.6 million, which will be refunded in a billing cycle during or before September 2018. Alternatively, the Company proposed to provide the refunds in May 2018 by filing a true-up after final rate approval by the Board. ETG's calculations include an adjustment to eliminate all Investment tax credits for the revenue requirements. The Company's revenue factor will be reduced to 1.40828098. The Company will use the Average Rate Assumption Method to amortize the protected excess deferred tax liability and proposed to amortize the unprotected portions of the excess over five (5) years. ETG's rate base includes an offset for deferred taxes, a portion of which will be used to provide customers an ongoing carrying cost benefit to the pre-tax weighted average cost of capital. To accomplish the rate reduction, the Company proposed to only reduce the distribution charges of its firm service classification and leave the service charges untouched. The Weather Normalization Clause Margin Revenue Factor will be adjusted, effective January 1, 2018, to realize the full benefit of the 2017 Tax Act.

The Company's proposed tariffs, include an across-the-board rate reduction reflecting the reduction in the corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). As a result, the residential gas heating customer using 1,000 therms annually will see an annual bill decrease of \$33.70 or 3.4%.

The January 31, 2018 Order set the deadline for the filing of motions to intervene or participate on February 20, 2018.

New Jersey Large Energy Users Coalition Motion to Intervene

By motion dated February 13, 2018, the New Jersey Large Energy Users Coalition ("NJLEUC"), moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC states that it was formed, in part, to monitor regulatory and rate proceedings involving the State's electric and natural gas utilities, and to intervene or participate in regulatory and rate proceedings to the extent necessary to represent its members' common interests. NJLEUC claims that its members are large end-use purchasers of electricity and natural gas distribution service from the State's regulated utilities and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to the implications of the Tax Act as it pertains to utility rates are unique from those of any other party. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact on large volume electric and natural gas customers, the utilities and stakeholders in this proceeding, as well as the potential impact of the issues to be addressed by the Board. The interests of NJLEUC's members as large end-use customers of the identified utilities are substantially different from those of any other party seeking intervention or participation. Therefore, it argues that NJLEUC's interests in this proceeding are unique on both a quantitative and qualitative basis.

Moreover, NJLEUC argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the cost of electric and natural gas distribution services received from the identified utilities by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically and directly affect NJLEUC within the meaning of these terms as used in the Uniform Rules, thereby making it appropriate for NJLEUC to intervene as a party.

NJLEUC points out that it has been granted intervenor status in the many regulatory that the issues to be decided in this proceeding.

In addition, NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers of the identified utilities. NJLEUC also claims that its entry as a party would promote an informed and balanced presentation of the issues. NJLUEC represents that, where it is possible and practical for it to do so, it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

On March 20, 2018, NJLEUC provided a list of its members that receive natural gas distribution service from ETG, but reserved its right to object to the identification of some or all of its members in future proceedings.

New Jersey Large Energy Users Coalition Motion for Admission Pro Hac Vice

By motion dated February 13, 2018, NJLEUC, via Steven S. Goldenberg, Esq., NJLEUC also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay is a member in good standing admitted to the bar of the District of Columbia, has had significant experience representing the interests of large end-use customers and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing NJLEUC before the Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in regulatory matters and issues, with a particular emphasis on the litigation of utility rate cases and the regulatory treatment of rate-related issues. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice. On February 15, 2018, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

ETG Response

By correspondence dated March 22, 2018, ETG indicates that it did not object to the motion to intervene or the motion for admission pro hac vice filed by NJLEUC.

DISCUSSION AND FINDINGS

The Board has reviewed the proposed plan filed by the Company, and **HEREBY DIRECTS** that the plan will be reviewed in the instant proceeding, in accordance with the schedule set forth in the Board's January 31, 2018 Order.

The Company's proposed tariffs include an across-the-board rate reduction reflecting the reduction in the corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). As mentioned above, the residential gas heating customer using 1,000 therms annually will receive an annual bill decrease of \$33.70 or 3.4%. Having reviewed the proposed tariffs, the Board **HEREBY DIRECTS** new tariffs to be filed by the Company to be effective April 1, 2018. The rates set forth in the tariffs are on an interim basis, subject to refund, pending the outcome of this proceeding.

Motion to Intervene

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;

3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (Order dated June 8, 2005).

After consideration of the papers and given the lack of any objections, the Board **HEREBY FINDS**, pursuant to N.J.A.C. 1:1-16.6(b), the members of NJLEUC who are customers of ETG will be directly affected by the outcome of this proceeding, and that NJLEUC has met the standards for intervention, as it is an interested party in this proceeding. Accordingly, having received no objections, the Board **HEREBY GRANTS** the motion for intervention of NJLEUC.

Motion for Admission Pro Hac Vice

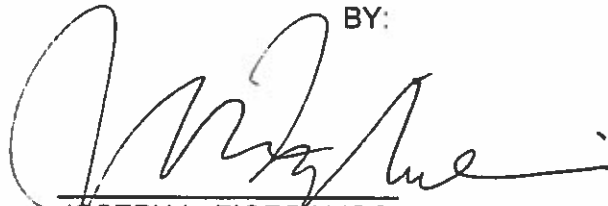
The Board has also reviewed NJLEUC's pro hac vice motion and the supporting affidavit of Mr. Forshay. This proceeding involves a complex field of law, and the Board is persuaded that Mr. Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, the Board **FINDS** that Mr. Forshay has satisfied the conditions for admission pro hac vice, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this matter provided that he shall:

1. Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
2. Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
3. Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
4. Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

This Order shall be effective March 29, 2018.

DATED: 3/26/18

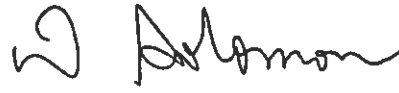
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PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



RICHARD S. MROZ
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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 NEW JERSEY BOARD OF PUBLIC UTILITIES'
CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017
DOCKET NO. AX18010001**

**IN THE MATTER OF THE COMPLIANCE FILING OF PIVOTAL UTILITY HOLDINGS, INC.
D/B/A ELIZABETHTOWN GAS
DOCKET NO. GR18030232**

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