



Agenda Date: 7/12/23  
Agenda Item: 2D

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE WAIVER REQUEST OF NEW )  
JERSEY NATURAL GAS COMPANY TO FILE A )  
PETITION FOR A REVIEW OF THE ORIGINAL )  
SERVICE AGREEMENT AND FIRST AMENDMENT )  
BETWEEN NEW JERSEY NATURAL GAS AND )  
ESSENTIAL POWER OPP, LLC )

DECISION AND ORDER

DOCKET NO. GW22050359

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Andrew K. Dembia, Esq.**, on behalf of New Jersey Natural Gas Company

BY THE BOARD:<sup>1</sup>

On May 19, 2022, New Jersey Natural Gas Company (“NJNG” or “Company”) filed a petition with the New Jersey Board of Public Utilities (“Board”) requesting a waiver of the requirement to file a petition for a review of the prudence of the Agreement for Service Classification Firm Transportation (“FT”) (“Original Service Agreement”) and the First Amendment to Service Agreement for Service Classification FT (“First Amendment”), between the Company and Essential Power OPP, LLC. (“Petition”).<sup>2</sup> If granted, NJNG would maintain the current rates set forth in the existing Original Service Agreement and First Amendment.

**BACKGROUND AND PROCEDURAL HISTORY**

NJNG and Ocean Peaking Power, LLC (“OPP”) entered into the Original Service Agreement for firm off-peak natural gas transportation service to serve specified electric generation facilities that OPP owned in Lakewood, New Jersey. The Original Service Agreement provided for firm gas service from May 15 through September 15 of each year and no specified minimum level of service from September 16 through May 14 of each year. The term of the Original Service Agreement was for 10 years from the commencement of service. On June 20, 2003, the Board approved the Original Service Agreement effective June 2003.<sup>3</sup> After the initial term, the Original

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<sup>1</sup> Commissioner Marian Abdou did not participate.

<sup>2</sup> Essential Power OPP, LLC (“Essential Power OPP”) is the successor in interest to Ocean Peaking Power, LLC (“OPP”).

<sup>3</sup> In re the Petition of New Jersey Natural Gas Company for Approval of a Service Agreement Between NJNG and Ocean Peaking Power LLC, BPU Docket No. GR02120947, Order dated June 20, 2003.

Service Agreement would continue for successive one-year terms unless either party provided a notice of termination.

On September 9, 2020, the Board approved the First Amendment between the Company and Essential Power OPP.<sup>4</sup> Additionally, in the Amendment Order, the Board directed “the Company to file a petition for review of the prudence of the Original Service Agreement and the First Amendment, or any modified or new agreement, following the expiration of the current term.” The First Amendment maintained the pricing of the Original Service Agreement, but reduced the operational balancing volumes available to Essential Power OPP.

As provided by the Company, the increasing use of Operational Flow Orders (“OFOs”) by Texas Eastern Transmission, LP (“Tetco”) limited the flexibility of NJNG’s Tetco interstate gas supply service, which is Essential Power OPP’s interstate pipeline gas supply source. Additionally, the Company explained that the reduced balancing quantities implemented through the First Amendment improved NJNG’s ability to serve its core customers in an operationally flexible manner in the event of a Tetco OFO. According to the Petition, the Amendment did not change the pricing terms in the Original Service Agreement.

The Amendment Order included a summary of the comments filed by the New Jersey Division of Rate Counsel (“Rate Counsel”). Rate Counsel did not oppose the First Amendment, but commented that the Original Service Agreement’s rates may be outdated given the length of time between the Original Service Agreement and subsequent industry developments including increases in NJNG’s cost of service.

### **THE PETITION**

In the Petition, NJNG asserted that the Original Service Agreement and First Amendment generate incremental revenue, provide important benefits to NJNG’s BGSS customers, and limit NJNG’s firm service commitment to the off-peak period, thus limiting costs to Essential Power OPP. As such, the Company argued that the rates charged under the Original Service Agreement and First Amendment remain appropriate and in the public’s interest.

NJNG agreed that substantial industry changes occurred since the approval of the Essential Power OPP rates. However, NJNG argued that such changes have not contributed to an increase in the costs of providing gas service because the existing facilities serve one other customer and significant capital improvements have not been required. Moreover, the Company argued that its existing facilities serving Essential Power OPP continue to depreciate leading to ongoing increases in margin benefits for NJNG’s BGSS customers. Based on these circumstances, NJNG opined that no change to the existing rates under the agreement is necessary.

### **Rate Counsel Comments**

On May 31, 2023, Rate Counsel submitted comments in connection with this matter.

Rate Counsel stated that based upon the representations in the Petition, Rate Counsel does not object to the requested waiver. However, the rates charged to gas-fueled electric generators are

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<sup>4</sup> In re the Petition of New Jersey Natural Gas Company and Essential Power OPP, LLC for Approval of (1) an Amendment to the Service Agreement and (2) a Protective Order and Exemption from Public Disclosure of Confidential Information, BPU Docket No. GO20010091, Order dated September 9, 2020 (“Amendment Order”).

a matter of continuing concern to Rate Counsel because these entities participate in PJM's competitive energy and capacity markets. Therefore, according to Rate Counsel, it is important that electric generators receive service at rates and under terms that are non-discriminatory, so that none of these entities receives an unfair advantage in the PJM markets. Rate Counsel pointed out that currently, NJNG does not have a tariff offering for "summer firm" such as that being provided to OPP, or other types of hybrid service that may be suitable for large electric generators. In order to ensure that the other large electric generators in NJNG's service territory receive service on a non-discriminatory basis, Rate Counsel believes that it may be appropriate for NJNG to offer other options for tariffed service for these customers. Therefore, Rate Counsel recommends that this issue be explored as part of NJNG's next base rate proceeding.

### **DISCUSSION AND FINDINGS**

After a comprehensive review of the record in this matter, including, but not limited to, the Original Service Agreement, the First Amendment, the Petition, Rate Counsel's May 31, 2023 comments, and all prior related Board Orders, the Board **HEREBY FINDS** the Company's waiver request to be reasonable, in the public interest, and in accordance with the law. While there have been numerous developments in the gas industry since 2003, the year the Board approved the Original Service Agreement, the Company's existing facilities serving Essential Power OPP continue to depreciate, leading to ongoing increases in margin benefits for NJNG's BGSS customers. Based on current circumstances, the Board **FURTHER FINDS** that the current rates charged under the Original Service Agreement and the First Amendment are reasonable at this time.

Therefore, the Board **HEREBY GRANTS** NJNG's waiver request and **HEREBY WAIVES** the requirement for the Company to file a petition for a review of the prudence of the Original Service Agreement and the First Amendment. Additionally, the Board **HEREBY DIRECTS** NJNG to evaluate the need to create a separate tariff for large electric generators and include testimony addressing this issue in its next base rate case petition.

In approving this matter, the Board emphasizes that the findings provided in this Order are case specific and have no precedential effect. As such, any pending or future proceedings shall be determined on a case-by-case basis.

NJNG's rates, including those related to its Rate Schedule FT tariff, 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.

This Order shall be effective July 19, 2023.

DATED: July 12, 2023

BOARD OF PUBLIC UTILITIES  
BY:

  
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PRESIDENT

  
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COMMISSIONER

ATTEST:   
\_\_\_\_\_  
SHERRIL L. GOLDEN  
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 WAIVER REQUEST OF NEW JERSEY NATURAL GAS COMPANY  
TO FILE A PETITION FOR A REVIEW OF THE ORIGINAL SERVICE AGREEMENT AND  
FIRST AMENDMENT BETWEEN NEW JERSEY NATURAL GAS AND ESSENTIAL POWER  
OPP, LLC

DOCKET NO. GW22050359

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