



Agenda Date: 10/13/11
Agenda Item: 2E

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)	DECISION AND ORDER
SERVICE ELECTRIC AND GAS COMPANY FOR)	
PROTECTIVE ORDERS AND EXEMPTION FROM)	ORDER OF APPROVAL
PUBLIC DISCLOSURE OF CONFIDENTIAL)	
INFORMATION AND APPROVAL OF GAS PURCHASE)	
CONTRACT WITH NORTH JERSEY ENERGY)	
ASSOCIATES, LTD. PARTNERSHIP)	DOCKET NO. GO11050282

Mally Becker, Esq., for Public Service Electric & Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On June 13, 1989, the Board of Public Utilities ("Board") approved a Gas Purchase and Sales Agreement ("1989 Agreement") between Public Service Electric & Gas ("PSE&G") and North Jersey Energy Associates, LP ("NJEA") whereby PSE&G provided gas sales and transportation services to NJEA's 300 MW combined-cycle gas-fired power plant in Sayreville New Jersey ("the Facility").¹ The Board subsequently approved an Amendment to the Gas Supply Agreement on November 5, 2003 ("2003 Agreement").² Both the 1989 Agreement and the 2003 Agreement provided for PSE&G to provide interruptible gas transportation service to the Facility over the PSE&G system to deliver gas that NJEA has procured for the Facility, NJEA to sell gas to PSE&G on certain peak days for PSE&G's system supply, and NJEA to purchase from PSE&G a portion of the Facility's gas supply.

The Facility is an exempt wholesale generator under the rules and regulations of the Federal Energy Regulatory Commission that provides power into the PJM markets from its central New Jersey location when market economics justify. The Facility is located less than one-half mile

¹ Decision and Order, *I/M/O the Petition of PSE&G for (1) Approval of Gas Purchase Contract with NJEA, and (2) Motion for Exemption from Public Disclosure of Confidential Information*. Decision and Order, Dkt. No. GM89030343 (BPU June 13, 1989).

² Order, *I/M/O the Application of PSE&G for the Approval of an Amendment to the Gas Purchase Agreement Currently Existing Between It and NJEA, a Limited Partnership*, Dkt. No. GM03080643 (BPU Nov. 5, 2003).

from Transcontinental Gas Pipeline's ("Transco's") Lower New York Bay lateral pipeline from which, according to information provided by PSE&G, the Facility can obtain gas service.

According to the petition filed by PSE&G, in October 2010, NJEA informed PSE&G of its intention to bypass the PSE&G system and to take service directly from Transco if NJEA and PSE&G were unable to agree to the terms and conditions of a new agreement ("2011 Agreement") to replace the 2003 Agreement which was due to expire in August 2011. As stated in the petition, PSE&G has reviewed NJEA's calculations and documentation from the Williams Companies, Inc. ("Williams"), the owner of Transco, and concluded that NJEA has a viable opportunity for physical bypass of the PSE&G gas delivery system.

After negotiations, PSE&G and NJEA came to terms resulting in the 2011 Agreement described below, and on May 4, 2011, PSE&G petitioned the Board for approval of the agreement, and requested that the Board issue a protective order exempting from public disclosure some of the terms of the agreement.

To ensure that Board Staff and the Division of Rate Counsel ("Rate Counsel") had sufficient time to evaluate the petition and proposed gas delivery agreement, PSE&G filed an amended contract and amended petition on July 15, 2011 seeking approval of the rates in the 2011 Agreement by October 31, 2011 and extending the prior agreement until that time. On September 2, 2011, a Secretary's Letter was issued in support of the extension of the term of the 2003 Agreement until the earlier of the date of a Board decision on the 2011 Agreement or October 31, 2011.

The salient terms of the 2011 Agreement are as follows:

- PSE&G will continue to maintain interconnection facilities needed to permit the delivery of a Maximum Daily Transportation Quantity ("MDTQ") to the Facility. The MDTQ refers to the maximum quantity of gas that NJEA may arrange to have interstate pipelines deliver to PSE&G and that PSE&G is obligated to receive and redeliver to NJEA on any given day.
- NJEA will pay PSE&G a fixed monthly transportation charge for the transport and redelivery to the Facility of gas to be used as fuel for the generation of electricity and steam at the Facility.
- The 2011 Agreement is effective as of the date of the Board Order and remains in effect for a term of four years ("the Term") commencing on the effective date.
- PSE&G will be the sole source of gas delivery service for the Facility over the Term of the 2011 Agreement.
- PSE&G has the right to interrupt or curtail deliveries under certain circumstances including if PSE&G determines that its system is being adversely affected by the Facility's use of the system.

Public Service requested that portions of the petition and the 2011 Agreement be treated as confidential information, and that the Board issue a protective order that exempts those portions from public disclosure for a period of five years. PSE&G contends that all references to the pricing provisions, through-put and the bypass analysis are proprietary to PSE&G and NJEA.

An affidavit executed by NJEA maintains that if the negotiated reduced rates were publicly disclosed, NJEA's competitors would seek to obtain the competitive advantage of similarly low rates. PSE&G argued that if future customers of PSE&G are made aware of the reduced rates made available to NJEA, those rates would become a "floor" to future customers.

Discovery was propounded upon PSE&G, and responses were received by Board Staff and Rate Counsel (together with PSE&G, the "Parties"). On October 5, 2011, the Parties entered into a stipulation ("Settlement") agreeing to the following:

- 1) PSE&G represents that NJEA has demonstrated that it has a viable physical bypass opportunity.
- 2) The 2011 Agreement enables the Facility to remain on PSE&G's system and to contribute margin sharing, thereby lowering the gas costs for all firm BGSS customers.
- 3) PSE&G represents that the fixed monthly rate under the 2011 Agreement is based on the cost required to bypass the PSE&G system as documented by NJEA.
- 4) NJEA has submitted an affidavit stating that all of the gas delivered under the 2011 Agreement will be used to generate electricity that is sold for resale qualifying NJEA for an exemption from payment of the Societal Benefits Charge as provided in N.J.S.A. 48:3-60.1. PSE&G commits to obtain a similar certification from NJEA annually during the Term.
- 5) The confidentiality issue should be decided by the Board's Custodian of Records pursuant to the Board's regulations, if and when a request for release of such data is made under the Open Public Records Act pursuant to N.J.A.C. 14:1-12 with continued treatment of the information as confidential pursuant to the agreement of the Parties pending that determination.
- 6) The Board Order approving the Settlement will become effective upon the service of the Order, or upon such date after the service thereof as the Board may specify, in accordance with N.J.S.A. 48:2-40.

DISCUSSION AND FINDING

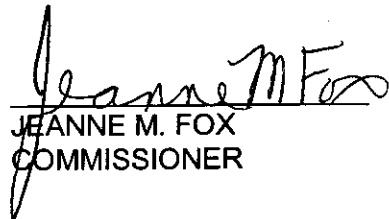
After reviewing the petition, the 2011 Agreement and the Settlement, the Board is satisfied that the 2011 Agreement will have a beneficial financial impact on other ratepayers by preserving NJEA's contribution to the PSE&G system that would otherwise be lost through a bypass. The Board is also satisfied that the fixed monthly rate in the 2011 Agreement was established based on the cost required to achieve that bypass, and that the revenues will be credited to the cost of gas for firm BGSS customers. Therefore, the Board **HEREBY FINDS** the terms of the 2011 Agreement between Public Service Electric & Gas and North Jersey Energy Associates are reasonable and in the public interest.

Accordingly, the, Board **HEREBY APPROVES** the Settlement and the underlying 2011 Agreement to become effective ten days from the date of this Board Order.


DATED: 10/13/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

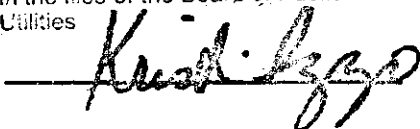

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
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



I/M/O the Petition of Public Service Electric & Gas Company
 For Protective Orders and Exemption from Public Disclosure of
 Confidential Information and Approval of Gas Purchase Contract With
 North Jersey Energy Associates, LP
 Service List

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF)
PUBLIC SERVICE ELECTRIC AND GAS) SETTLEMENT
COMPANY FOR PROTECTIVE ORDER AND)
EXEMPTION FROM PUBLIC DISCLOSURE OF)
CONFIDENTIAL INFORMATION AND) BPU Dkt. No. GO11050282
APPROVAL OF GAS PURCHASE CONTRACT)
WITH NORTH JERSEY ENERGY ASSOCIATES)
LTD, PARTNERSHIP)

APPEARANCES:

Mally Becker, Assistant General Regulatory Counsel, for the Petitioner, Public Service Electric and Gas Company

Felicia Thomas-Friel, Esq., Deputy Rate Counsel, Division of Rate Counsel; **Sarah H. Steindel**, Assistant Deputy Rate Counsel, Division of Rate Counsel

Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (**Paula T. Dow**, Attorney General of New Jersey)

TO THE HONORABLE BOARD OF PUBLIC UTILITIES

1. On May 4, 2011, Public Service Electric and Gas Company (Public Service or the Petitioner) filed a "Public Copy" of a petition (the Petition) with the Board of Public Utilities (Board or BPU) to approve by August 1, 2011, a contract under which Public Service will provide gas delivery service to North Jersey Associates Limited Partnership (NJEA). In addition, Public Service filed an unredacted "Confidential Copy" with the Custodian of the Board. PSE&G also requested confidential treatment of certain information contained in the "Confidential Copy" of the Petition and in exhibits attached to the Petition. A copy of the Petition and exhibits were served upon the Division of Rate Counsel (Rate Counsel).

2. In order to provide the Board and Rate Counsel with additional time to consider the Petition, PSE&G filed an amended contract (the 2011 Gas Delivery Agreement) and amended petition on July 15, 2011, seeking approval of the rates defined with the Gas Delivery Agreement by October 31, 2011 and a Secretary's Letter supporting extension of the existing BPU-approved gas purchase agreement between Public Service and NJEA upon identical terms and conditions as previously approved by the Board for a term to end on the earlier of the date upon which the BPU issues an Order approving the 2011 Gas Delivery Agreement or October 31, 2011.

3. NJEA is a limited partnership that owns and operates a combined cycle gas-fired power plant located in Sayreville, New Jersey (the Sayreville Facility) that is nominally rated at approximately 300 MW. The Sayreville Facility is an exempt wholesale generator, and provides dispatchable merchant power into the PJM markets from its central New Jersey location when the economics in the market justify that it do so.

4. PSE&G has provided gas delivery service to the Sayreville Facility pursuant to BPU-approved agreements for more than 20 years. On May 4, 1989, PSE&G and NJEA entered into a "Gas Purchase and Sales Agreement", which was approved by the Board and pursuant to which PSE&G provided gas sales and transportation services to NJEA at the Facility.¹ The Board subsequently approved an Amendment to the Gas Supply Agreement on November 5, 2003 (the 2003 Amendment).² The term of the BPU-approved 2003 Amendment was originally due to expire on August 13, 2011.

¹ Decision and Order, *I/M/O the Petition of PSE&G for (1) Approval of Gas Purchase Contract with NJEA, and (2) Motion for Exemption from Public Disclosure of Confidential Information*. Decision and Order, Dkt. No. GM89030343 (BPU June 13, 1989).

² Order, *I/M/O the Application of PSE&G for the Approval of an Amendment to the Gas Purchase Agreement Currently Existing Between It and NJEA, a Limited Partnership*, Dkt. No. GM03080643 (NJBP Nov. 5, 2003).

5. On October 8, 2010, in anticipation of the 2003 Amendment's expiration date, NJEA formally notified PSE&G of its intention to bypass the PSE&G system and to take service directly from Transco if agreement could not be reached with respect to the terms and conditions of a new agreement to replace the 2003 Amendment when it terminated in August 2011. NJEA asserted that its bypass opportunity arose from the Sayreville Facility's location less than one-half mile from the Transcontinental Gas Pipe Line's (Transco) Lower New York Bay lateral pipeline, from which the Sayreville Facility can obtain gas service. NJEA provided estimates from The Williams Companies, Inc., the owner of Transco, setting forth the cost required to connect the Sayreville Facility directly to Transco and including engineering details regarding the proposed interconnection by Williams.

6. The 2011 Gas Delivery Agreement commits PSE&G to provide natural gas transportation service to the Sayreville Facility. The 2011 Gas Delivery Agreement provides for a fixed monthly payment by NJEA to PSE&G. NJEA has submitted an affidavit documenting that 100% of the natural gas delivery service provided under the 2011 Gas Delivery Agreement will be used to generate electricity that is sold for resale. Thus, in accordance with N.J.S.A. 48:3-60.1, NJEA is not subject to the Societal Benefits Charge (SBC), and the 2011 Gas Delivery Agreement does not require NJEA to pay the SBC. PSE&G commits to obtain from NJEA a similar certification confirming that 100% of the natural gas delivery service provided by PSE&G annually during the term of the 2011 Gas Delivery Agreement shall be used to generate electricity that is sold for resale.

7. Discovery was propounded upon the Company and responses were served upon Staff and Rate Counsel, the Parties to this proceeding. During the course of discovery and

thereafter, the Parties engaged in discussions regarding the Petition and the 2011 Gas Delivery Agreement.

8. PSE&G represents that the fixed monthly rate provided for in the Gas Delivery Agreement was established based on the cost required to bypass the PSE&G system as documented by NJEA. PSE&G further represents that approval by the Board of the Gas Delivery Agreement would place the Company's firm natural gas customers in a better position than they would otherwise be if NJEA chose to bypass the Public Service gas delivery system. At the time of PSE&G's next BGSS proceeding, the revenues from this service would be credited to the cost of gas used to serve firm BGSS customers, consistent with existing treatment of non-commodity revenue. As a result, revenue associated with the 2011 Gas Delivery Agreement would inure to the benefit of PSE&G's firm BGSS customers by lowering gas costs.

9. In addition, PSE&G and NJEA have submitted affidavits asserting that certain cost information contained in the filing are competitively sensitive. They have described the measures taken to prevent disclosure of the referenced information and described the harmful effects that disclosure of the commercially sensitive information contained in the Petition and Attachments would have upon NJEA, including but not limited to affording NJEA's competitors insight into NJEA's competitive position.

10. The Parties agree that the 2011 Gas Delivery Agreement should be approved effective by the Board, and will become effective upon the service of a Board Order approving the Settlement, or upon such date after the service thereof as the Board may specify, in accordance with N.J.S.A. 48:2-40.

11. The Parties agree that the confidentiality issue should be decided by the Board's Custodian of Records pursuant to the Board's regulation, if and when a request for

release of such data is made under the Open Public Records Act pursuant to N.J.A.C. 14:1-12, but until such time as the Board's Custodian of Records renders a decision, such information shall continue to be treated as confidential information pursuant to the agreement of the Parties.

12. The undersigned parties further agree that this Settlement has been made exclusively for the purpose of this proceeding and that this Settlement, in total or specific item, is in no way binding upon them in any other proceeding, except to enforce the terms of this Settlement.

PUBLIC SERVICE ELECTRIC AND
GAS COMPANY

PAULA T. DOW
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Attorney for the Staff of the New Jersey
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BY: Mally Becker
Mally Becker, Esq.
Assistant General Regulatory Counsel

BY: Alex Moreau
Alex Moreau
Deputy Attorney General

Dated: October 5, 2011

Dated: October 5, 2011

DIVISION OF RATE COUNSEL
STEFANIE A. BRAND, DIRECTOR

BY: Sarah H. Steindel
Sarah H. Steindel
Assistant Deputy Rate Counsel

Dated: October 5, 2011