



Agenda Date: 6/17/15
Agenda Item: 2D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF NEW JERSEY)
NATURAL GAS COMPANY AND LAKEWOOD)
COGENERATION, L.P. FOR (1) APPROVAL OF A)
CAPACITY AGREEMENT BETWEEN LAKEWOOD, L.P.)
AND NEW JERSEY NATURAL GAS COMPANY AND)
(2) A PROTECTIVE ORDER AND EXEMPTION FROM)
PUBLIC DISCLOSURE OF CONFIDENTIAL)
INFORMATION) DOCKET NO. GO14101149

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Andrew Dembia, Esq., New Jersey Natural Gas Company
Steven Goldenberg, Esq., Fox Rothchild, LLP, on behalf of Essential Power LLC, Lakewood Cogeneration

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") is considering a joint petition filed by New Jersey Natural Gas Company ("NJNG" or "Company") and Lakewood Cogeneration, L.P. ("Lakewood") (collectively, the "Joint Petitioners") for approval of a Capacity Agreement between Lakewood and NJNG and a Protective Order and exemption from public disclosure of confidential information.

BACKGROUND

Lakewood currently owns and operates a natural gas cogeneration facility located in the Lakewood Industrial Park, Lakewood, New Jersey ("Cogeneration Facility"). CNG Energy Company ("CNG") previously owned and operated the Cogeneration Facility which began commercial operation on November 8, 1994. It was originally classified as a Qualifying Facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), and subsequently re-classified as an Exempt Wholesale Generator. PURPA required local electric distribution companies to purchase the power generated at these qualifying cogeneration facilities. Thus, the power generated at the Cogeneration Facility was sold to the Jersey Central Power and Light Company ("JCP&L") under a Power Purchase Agreement ("PPA") executed with CNG.

The power was used to serve JCP&L's ratepayers. After the passing of the Electric Discount and Energy Competition Act, codified at N.J.S.A. 48:3-50 to -107, and the restructuring of the energy utilities, JCP&L commenced selling the energy generated at the Cogeneration Facility into the PJM Interconnection LLC ("PJM"¹) Day Ahead Market. JCP&L received payments from PJM for the energy and capacity sales. These payments were used to offset the above market prices that JCP&L paid under its PURPA mandated PPA with Lakewood. The PPA expired on November 8, 2014.

At around the same time CNG entered into its PPA with JCP&L, CNG also executed a Capacity Reservation Precedent Agreement ("Original Agreement") with NJNG on November 23, 1988, to obtain transportation capacity from NJNG in the amount of 50 MMcf/day for the transportation of natural gas from two interstate pipeline systems to the Cogeneration Facility. By Order dated May 17, 1989, under Docket No. GM89020146², the Board approved the Original Agreement. Under the terms of the Original Agreement, NJNG constructed transmission and other facilities necessary to deliver natural gas to the Cogeneration Facility by the completion date. NJNG completed the construction of its facilities and the Cogeneration Facility commenced commercial operations on November 8, 1994. The term of the Original Agreement was twenty (20) years.

As part of the Original Agreement, NJNG made available to CNG for its sole and exclusive use transportation capacity of up to 50 MMcf/day, on a firm basis, 365 days per year. However, NJNG also had the right under the Original Agreement to require CNG to relinquish all or a portion of its capacity for up to thirty (30) days per operating year, in which case NJNG would compensate CNG for the incremental costs incurred by CNG resulting from the unavailability of service from the Company.

NJNG charged CNG an annual demand charge of \$2.614 million payable monthly in the form of a Capacity Reservation Charge for the services rendered and for capital expenditures of constructing the intra-state transmission line within NJNG's service territory. The Original Agreement assumed a cost of the NJNG transmission line of \$19.0 million.

In the event that CNG required continued transportation capacity to the Cogeneration Facility beyond the initial twenty (20) year term, NJNG agreed to continue making transportation capacity available pursuant to terms and conditions of the Original Agreement, except that the charge paid by CNG for any such subsequent service would be based upon the agreed upon residual value of \$11.6 million of the cost of NJNG's facilities required to render the service contemplated. Additionally, the operating and maintenance component of the charge would be revised to reflect the then current experience.

Prior to the expiration date of the Original Agreement, Lakewood, as the current owner of the Cogeneration Facility, contacted NJNG to discuss amending and updating the terms of the Original Agreement. The Joint Petitioners agreed to extend the Original Agreement, as amended, and seek the approval of the Board for the Capacity Agreement. The Joint

¹ PJM is the privately-held, limited liability corporation approved by the Federal Energy Regulation Commission as a Regional Transmission Organization that manages the regional, high-voltage electricity grid serving all or parts of 13 states, including New Jersey. PJM also operates the regional competitive wholesale electric market and manages the regional transmission planning process. N.J.S.A. 48:3-51.

² In re the Petition of New Jersey Natural Gas Company's Application for Approval of Capacity Reservation Precedent Agreement Between New Jersey Natural Gas Company and CNG Energy Company, BPU Docket No. GM89020146, Order dated May 17, 1989.

Petitioners consented to the continuation of the Original Agreement until such time as the Board issued an Order on the Capacity Agreement. On October 8, 2014, the Joint Petitioners executed the Capacity Agreement.

PETITION

On October 10, 2014, the Joint Petitioners formally filed a petition with the Board seeking approval of the Capacity Agreement, as well as a Protective Order and the exemption from public disclosure of what the Joint Petitioners maintain is confidential information. The Joint Petitioners requested that the matter be retained at the Board. The Joint Petitioners cited to the "evergreen clause" within the Original Agreement as the basis of the extension of the services to be provided through the Capacity Agreement. See Original Agreement at Section III A, attached to the comments of the Division of Rate Counsel ("Rate Counsel") dated May 4, 2015 as RCR-1.

Under the terms of the Capacity Agreement, NJNG will continue to provide to Lakewood up to 50 MMcf/day of firm transportation services, the Maximum Daily quantity ("MDQ") of firm transportation service at a minimum operating pressure of 672 PSIG on the NJNG system for the sole and exclusive use of and at the Cogeneration Facility. According to the Joint Petition, pursuant to N.J.A.C. 14:3-1.3 and Section 11.2 of NJNG's tariff,³ the service rendered under the Capacity Agreement shall not be deemed to be tariffed services. The Joint Petition indicates that NJNG will not charge Lakewood under its Firm Transportation Service ("FT") Tariff for firm transportation natural gas through its system, whether or not the gas to be transported has been procured by Lakewood from NJNG. Instead, Lakewood will compensate NJNG for the reservation of firm capacity of 50 MMcf/day by way of a (1) a Monthly Capacity Charge ("MC"); and (2) a Monthly Operation and Maintenance Charge ("MOMC"), each payable in arrears in equal installments commencing on the effective date of the Capacity Agreement, and continuing thereafter on the first of each succeeding month during the term of the Capacity Agreement.

According to the Joint Petition, the MOMC and the MC in the Capacity Agreement are based upon the prescriptive criteria set in the evergreen provision of the Original Agreement. The evergreen provision called for the charge to be paid by the Cogeneration Facility, should Lakewood require continuation of the transportation capacity available to the Cogeneration Facility beyond the initial twenty (20) year term of the Original Agreement, to be based upon the residual value of \$11.6 million of the cost of NJNG's facilities required to render the service contemplated, as well as the operating and maintenance component of such charge to be revised to reflect the current experience.

The Capacity Agreement also proposes that, subject to Board approval, NJNG will continue to sell to Lakewood on an interruptible basis all or a portion of the Cogeneration Facility's natural gas requirements through the major portion of each operating year. The pricing terms are modified to reflect that the transaction will be pursuant to a North American Energy Standards Board contract mutually agreed and entered into by the Joint Petitioners.

The Capacity Agreement allows NJNG to continue to exercise the option of curtailing service to Lakewood. However, this provision has been modified from the Original Agreement. The Original Agreement provided that in the event that NJNG required all or a portion of CNG's capacity on its system for its other firm customers' requirements, CNG would relinquish such amount of needed capacity and, if natural gas would have otherwise been available to the

³ B.P.U. N.J. No. 8 Gas <http://www.njng.com/regulatory/pdf/Tariff05012015.pdf>

Cogeneration Facility and the Cogeneration Facility would have been dispatched, NJNG was obligated to reimburse CNG for the incremental costs. If interstate pipeline capacity was not available to CNG during the relinquishment of its capacity to NJNG or the Cogeneration Facility was not dispatched, then NJNG could use CNG's capacity for its other firm customers without paying the incremental compensation to CNG. NJNG could request that CNG relinquish its capacity no more than thirty (30) days per operating year.

Under the terms of the proposed Capacity Agreement, NJNG may suspend, curtail, or discontinue its service for any of the following reasons: (1) for the purpose of making repairs, changes, replacements, or improvements in any part of its system; (2) for compliance in good faith with any governmental order or directive, whether federal, state, municipal, or otherwise, even if such order or directive subsequently is held to be invalid; and (3) in the event of an emergency threatening the integrity of its system if, in NJNG's sole judgment, such action will prevent or lessen the emergency condition. NJNG is also no longer required to reimburse Lakewood for any incremental costs incurred during these interruptions of service pursuant to the Capacity Agreement.

According to NJNG, approval of the Capacity Agreement may result in several ratepayer benefits. First, the Cogeneration Facility may be dispatched more frequently by PJM due to the reduction in costs under the Capacity Agreement as compared to the Original Agreement. The Company asserts that additional dispatching at a lower rate could also potentially produce energy commodity cost savings for New Jersey ratepayers and enhance the quality of service provided to them. NJNG states that this is consistent with and supports the Energy Master Plan ("EMP") which has the goal of driving down the cost of energy for customers, which could have a positive impact on businesses and residents in the region. Moreover, NJNG cites to another goal of the EMP - to promote economic development by increasing in-state energy production, improving grid reliability, and recognizing the economic, environmental, and social benefits of energy efficiency, energy conservation, and the creation of jobs. Thus, according to the Joint Petitioners, the reduced costs under the Capacity Agreement, will make the Cogeneration Facility a more economic unit, and provide benefits that meet the goals of the EMP.

COMMENTS

Rate Counsel

On May 4, 2015, Rate Counsel filed comments in this matter. Rate Counsel does not recommend that the Board approve the Capacity Agreement stating the Company did not follow the required procedures, and did not demonstrate that the Capacity Agreement satisfied the criteria required for approval of a discounted rate agreement established under the Board's August 18, 2011 Order, in In re a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions ("Rate Discount Order").⁴

Rate Counsel references the origins of the Rate Discount Order stating that it stemmed from the 2009 Public Service Electric and Gas Company ("PSE&G") base rate case.⁵ The Board initiated

⁴ In re a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discount and Associated Contract Terms and Conditions, BPU Docket Nos. GR10100761 and ER 10100762, Order dated August 18, 2011.

⁵ In re Petition of Public Service Electric and Gas Company for Approval of Changes in the Tariffs for Electric and Gas Service B.P.U.N.J. No. 14 Electric and B.P.U.N.J. No 14 Gas Pursuant to N.J.S.A. 48:2-

a generic proceeding to consider issues including the legality of offering discounted rates for natural gas distribution service, the legality of “evergreen” provisions in discounted rate contracts, and the criteria and process that should be established for the granting of rate discounts based on a customer’s ability to bypass the utilities’ distribution system or for other reasons. Rate Discount Order at 2-3. In the Rate Discount Order, the Board indicated that rate discount agreements are subject to review by the Board to determine whether the resulting rates are just and reasonable, whether they are the result of a threat of physical bypass or based on other factors. *Id.* at 23. The Board further stated that utilities would not be required to seek Board approval of the renewal of rate discount agreements pursuant to existing evergreen provisions. *Id.* at 20. The utilities are required only to provide advance written notice of the expiration of the primary terms of existing contracts containing “evergreen” provisions. *Id.* at 20, 24.

Rate Counsel also states that to create more transparency, the Board directed the natural gas utilities to file proposed tariff pages setting forth the minimum information required to be submitted by a customer seeking a rate discount. *Id.* at 24. NJNG’s tariff provisions that address rate discounts pursuant to the Rate Discount Order are Sections 11.1 and 11.2 of NJNG’s Standard Terms and Conditions of its tariff. Section 11.1 applies to customers requesting discounts based on a claimed ability to bypass. Rate Counsel affirms that the Cogeneration Facility is not a bypass situation. According to Rate Counsel, Section 11.2 requires the customer to make a written request, and to submit “all of the information that the Company deems appropriate in considering the Customer’s request” for those customers requesting rate discounts for reasons other than an asserted ability to bypass. It also states that such request “will be evaluated on a case by case basis to determine whether a discount from NJNG’s Tariff Rate for Gas Service would be just and reasonable,” and that any rate discount agreement is subject to Board approval.

Rate Counsel argues that the terms of the Capacity Agreement are substantially different from the terms of the Original Agreement, and thus is not a renewal of the Original Agreement under its evergreen provision but rather a new agreement requiring Board approval under the Rate Discount Order. The Original Agreement provided that, in the event that NJNG required all or a portion of CNG’s capacity on its system for its other firm customers’ requirements, CNG would relinquish such amount of needed capacity. According to Rate Counsel, the Capacity Agreement now limits the interruptions to the three situations: 1) for the purpose of making repairs, changes, replacements, or improvements in any part of its system; 2) for compliance in good faith with any governmental order or directive, whether federal, state, municipal or otherwise, even if such order or directive subsequently is held to be invalid; and 3) in the event of an emergency threatening the integrity of its system if, in NJNG’s sole judgment, such action will prevent or lessen the emergency condition. Rate Counsel argues that NJNG’s right to interrupt will be more limited overall even though the modified language in the Capacity Agreement would not require NJNG to pay Lakewood for its incremental costs during interruptions and would not limit interruptions to thirty (30) days per operating year. Thus, according to Rate Counsel, the evergreen section of the Rate Discount Order does not apply and therefore, NJNG should have filed the petition seeking approval for a rate discount pursuant to the Rate Discount Order.

21 and N.J.S.A. 48:2-21.1 and for Approval of a Gas Weather Normalization Clause; a Pension Expense Tracker and for Other Appropriate Relief, BPU Dkt No. GR09050422 OAL Dkt No. PUCRL-07599-2009N, Order dated July 9, 2010.

Rate Counsel further claims that under the Original Agreement, the quid pro quo, for the customer paying only incremental costs and not contributing toward its share of the costs of the Company's overall transmission and distribution system appears to have been that the service to the Cogeneration Facility could be interrupted if capacity was needed to serve other firm customers, but that it would also be subject to NJNG's obligation to reimburse the customer for the incremental costs of using an alternate fuel.

Rate Counsel maintains that under the Capacity Agreement, Lakewood would now be subject to the same level of interruptibility as other firm customers who are paying the "full freight", rather than the lower priority service that was the quid pro quo for the discount rate under the Original Agreement. Thus, Rate Counsel argues that there is insufficient evidence to demonstrate that the new Capacity Agreement would result in just and reasonable rates. Rate Counsel finds that the benefits identified for the Capacity Agreement are too generalized and do not demonstrate just and reasonable rates. Rate Counsel points to the Board's most recent approval of the gas service agreement ("GSA") between Eagle Point Power Generation, LLC ("Eagle Point") and Public Service Electric and Gas Company ("PSE&G")⁶ whereby the Board noted that since units are dispatched by PJM based on locational marginal pricing, which is based in part on a unit's variable costs, it was likely that the unit's throughput would be increased, producing greater revenues that would benefit PSE&G's other gas customers. The Board further noted, according to Rate Counsel, that the pricing in the GSA would improve competitiveness of the unit allowing it to re-power its steam turbine, leading to environmental benefits as a result of reduced emissions and improved efficiency. Rate Counsel contends that Lakewood has not adequately explained or documented that ratepayers would benefit from the proposed Capacity Agreement. Rate Counsel claims that simply stating that a lower price may result in more frequent dispatch and "may" or "should" create economic and environmental benefits does not constitute proof that benefits will occur. Rate Counsel argues that it is unclear how the reduced fixed annual charge with no variable component under the Capacity Agreement will increase electric output at the Lakewood Cogeneration Facility. Rate Counsel contends that Lakewood could gain a better competitive position in the PJM capacity market while it could reduce electrical output rather than increase it, resulting in no clear benefits to ratepayers.

NJNG's Reply Comments

By letter dated May 6, 2015, NJNG filed a reply to the comments submitted by Rate Counsel. NJNG disagrees with Rate Counsel's conclusion that the Capacity Agreement should not be approved, finding its conclusions to be based upon faulty analysis which ignores the facts and pertinent law and policy.

NJNG argues that if it had filed its petition for approval of the Capacity Agreement under the Rate Discount Order, as argued by Rate Counsel, under the Company's tariff, for customers requesting discounts for reasons other than an asserted ability to bypass, Section 11.2 would apply which requires the customer to make a written request, and to submit "all of the information that the Company deems appropriate in considering the Customer's request." NJNG argues that the same section provides that such a request "will be evaluated on a case-by-case basis to determine whether a discount from NJNG's Tariff Rate for Gas Service would be just and reasonable," and that any rate discount agreement is subject to Board approval.

⁶ In re the Rate Schedule CSG Transportation Service Agreement Between Public Service Electric and Gas Company and Eagle Point Power Generation, LLC, BPU Dkt. No. GR14030293, Order dated June 18, 2014.

The Company claims that by following Rate Counsel's line of reasoning, Lakewood's justification for a continuation of a rate discount would be based solely upon the pertinent provision of the Original Agreement, Section III A, which stated:

[i]n the event that CNG requires continuation for transportation capacity availability to the CNG Facility beyond the initial twenty (20) year the NJNG agrees to continue such transportation capacity availability pursuant to the terms and conditions hereof, except that the charge paid by CNG for any such subsequent service will be based upon the agreed upon residual value of the cost of NJNG's facilities required to render the service contemplated hereby, i.e. \$11.6 million, as well as the operating and maintenance component of such charge which will be revised to reflect the then current experience.

Original Agreement at 5.

NJNG further argues that no other information would be required to evaluate the request in the Company's view. The Company asserts that all parties are in the same position at this point in this proceeding that they would otherwise have been in if NJNG had filed its petition pursuant to the Rate Discount Order. Rate Counsel's reliance upon the process by which the Capacity Agreement has come before the Board as a basis for objecting to its approval is confounding. According to NJNG, Rate Counsel has had the opportunity to fully review the Capacity Agreement as it is currently filed.

NJNG argues that the terms of the Capacity Agreement are essentially the same as those contained in the Original Agreement, stating that only the extensive construction related provisions have been removed and the changes in law that have occurred over the past twenty (20) years have been recognized and addressed, e.g. the substitution of the Societal Benefits Charge ("SBC") and Sales and Use Tax ("SUT") provision for the original provision regarding the Gross Receipts and Franchise Tax ("GR&FT").

NJNG contends that the two (2) substantive changes reflected in the Capacity Agreement—the elimination of NJNG's compensation to Lakewood for certain service interruptions and the elimination of the thirty (30) day per year interruption limit—protects ratepayers from the possibility of increased costs associated with interruptions to Lakewood, while allowing for unlimited interruptions if, in NJNG's sole discretion, it believes to do so would lessen or prevent an emergency condition. NJNG states that Rate Counsel is simply wrong in arguing that Lakewood will obtain firm service at a price that is more favorable than the "full freight" paid by firm customers. According to the Company, service to Lakewood has been interrupted more than thirty (30) times since November 2014. NJNG states that it monitors and evaluates whether allowing the Cogeneration Facility to operate would cause an unacceptable pressure condition (emergency) downstream. NJNG claims that Lakewood is not allowed to operate or is interrupted if such a condition would be created. NJNG states that it has an obligation to serve its firm customers and will interrupt service to the Cogeneration Facility in order to maintain safe operating conditions with the appropriate pipeline pressures required to provide reliable service to its firm customers. Thus, NJNG states that Rate Counsel's assertion that the Cogeneration Facility will obtain "firm" service at a price that is more favorable than the "Full Freight" paid by firm customers is simply wrong.

Therefore, NJNG disputes Rate Counsel's contention that Lakewood has been afforded a priority in its use of the NJNG system and claims that in fact Lakewood has paid more than NJNG's interruptible tariff service in three (3) of the last four (4) years. Moreover, Lakewood is paying more than the cost of the incremental improvements after calculating the accumulated payments made under the Original Agreement and the Capacity Agreement of about \$83.0 million. The Original Agreement references \$19.0 million of construction costs. Thus, Lakewood is paying more than four (4) times the cost of the incremental improvements and is thus, contributing to the overall system.

By its reply comments, NJNG is also seeking an amendment to the proposed Capacity Agreement to correct the level of the pressure from 672 psi to 400 psi. According to NJNG, an error in the amount of the pressure was noticed after the Capacity Agreement was executed. Joint Petitioners informed Board staff and Rate Counsel about the mistake during the March 19, 2015 teleconference.

Rate Counsel's Supplemental Reply Comments

In its reply comments dated May 13, 2015, Rate Counsel challenges the argument by NJNG that "Lakewood is paying more than four times the cost of the incremental improvements and is contributing therefore, to the overall system." Rate Counsel argues that NJNG's analysis ignores the fact that NJNG is entitled to earn a return on its investments. Rate Counsel argues that rates sufficient to provide a return on a long lived investment over a forty (40) year period can be expected to total a multiple of the amount of the original investment. Rate Counsel states that there is no documentation showing that payment totaling \$83.0 million over forty (40) years would constitute recovery for more than NJNG's original incremental investment of \$19.0 million.

Rate Counsel also states that, contrary to NJNG's arguments, the rate to be paid by Lakewood does not reflect its fair share of system costs given the level of service to be provided. Rate Counsel claims that NJNG's comparison calculation of the rates paid by Lakewood over the past four (4) years with the rates it would have paid under NJNG's tariff for interruptible service does not demonstrate reasonableness.

First, Rate Counsel argues that NJNG is using the rate under the Original Agreement for the comparison and not the rate that would be charged under the Capacity Agreement if approved. Second, Rate Counsel argues that Lakewood's usage during the past four (4) years may not represent its usage in the future given that it no longer is selling its output to JCP&L. Third, Rate Counsel argues that NJNG should not be comparing Lakewood's payments to its tariff rate for interruptible service but rather a more proper comparison would be to NJNG's firm service tariff rate such as FT. Based upon the calculation performed by Rate Counsel, the Original Agreement provides deep discounts and, with the lower rates under the Capacity Agreement, there will be even deeper discounts. Rate Counsel argues that these rates do represent the Cogeneration Facility's proportionate share of the costs of the overall system NJNG must maintain to provide service to its firm customers.

DISCUSSION AND FINDINGS

Pursuant to the Rate Discount Order, rate discount agreements are subject to review by the Board to determine whether the resulting rates are just and reasonable, regardless of whether they are the result of a threat of physical bypass or based on other factors. Rate Discount Order at 23. The Rate Discount Order further states that utilities are not required to seek Board

approval of the renewal of rate discount agreements pursuant to existing evergreen provisions. Id. at 20. The Rate Discount Order only requires utilities to provide advance written notice of the expiration of the primary terms of existing contracts containing an evergreen provision. Id. at 20, 24. Here, although the Original Agreement contains an evergreen provision, the Board agrees with Rate Counsel that the provision of the Rate Discount Order dealing with extension under such a provision does not apply since there are substantive changes relating to the parameters for interruption of service to the Cogeneration Facility that were not contemplated by the Original Agreement. However, since the Company petitioned the Board for approval of the Capacity Agreement, this distinction does not end the inquiry.

As previously noted, the Rate Discount Order also directed the natural gas utilities to file proposed tariff pages setting forth the minimum information required to be submitted by a customer seeking a rate discount. Id. at 24. As also previously described, NJNG's tariff provisions that address rate discounts pursuant to the Rate Discount Order are Sections 11.1 and 11.2 of NJNG's Standard Terms and Conditions. Section 11.1 applies to customers requesting discounts based on a claimed ability to bypass and is inapplicable. Section 11.2 applies to customers requesting a discount for reasons other than an asserted ability to bypass. Section 11.2 requires the customer to make a written request, and to submit "all of the information that the Company deems appropriate in considering the customer's request." It also states that such a request "will be evaluated on a case by case basis to determine whether a discount from NJNG's Tariff Rate for Gas Service would be just and reasonable," and that any rate discount agreement is subject to Board approval.

The Board **FINDS** merit with respect to the procedural concerns expressed by Rate Counsel. The Capacity Agreement makes modifications to the terms of the Original Agreement that extend beyond the changes contemplated by the evergreen clause. The Joint Petitioners erred in their decision to not file for approval under the express terms of the Rate Discount Order because some of the modifications are substantive in nature. NJNG nevertheless made a formal filing with the Board for approval of the Capacity Agreement providing parties the opportunity to issue discovery, develop the record and review the facts upon which the rate discount is based, and thus make a determination as to whether the rate discount is just and reasonable. Accordingly, the Board **FINDS** that the manner in which the Joint Petitioners filed their petition for Board approval did not hinder the ability of the parties involved to conduct a thorough review and make a determination of whether the proposed discounted rate is just and reasonable.

Having reviewed the Joint Petitioners' filing and the comments and reply comments filed by Rate Counsel and NJNG with respect to the level of the discounted rates, the Board **FINDS** the discounted rates in the Capacity Agreement to be just and reasonable. The discounted rates are commensurate with the intent of the evergreen provision of the Original Agreement, the level of service to be provided, contribute toward the incremental costs on the system and further the State's policy to foster natural gas-fired generation providing benefits to the State and ratepayers.

Lakewood has paid for the cost of the NJNG transmission line and upgrades that were constructed for the Cogeneration Facility's use based upon the accumulated payments made under the Original Agreement during its twenty (20) year term. The cost of the transmission line referenced in the Original Agreement was estimated at \$19.0 million. Based upon normal ratemaking principles, the rate base rate of return method for establishing rates, and the anticipated accumulated revenues, Lakewood paid for the transmission line upgrades, while providing a return on the Company's investment. Over the first twenty (20) years, Lakewood

was to pay \$2.614 million on an annual basis, equating to approximately \$52.28 million. The Company recovered the cost of its facilities over the time frame of the Original Agreement because it assumed recovery over a 20 year period. The residual cost is the difference between the twenty (20) year recovery and the booked depreciated cost which appears to be booked over an approximate forty (40) year period based upon the residual value in the Original Agreement. This amount more than compensated NJNG for the estimated cost of the investment discussed in the Original Agreement, as well as provided a return in excess of the return approved in the NJNG's last base case. At one point, during the course of the twenty (20) year term under the Original Agreement, the annual revenues and net plant were included in the calculation of base rates and rate base. The remainder of NJNG's customers benefitted, as they have benefitted in the past, since the revenue is treated as margin revenue and is credited to firm customers in the Company's rate cases at the amount Lakewood pays under the Original Agreement, which called for a payment of \$2.614 million annually.

The Original Agreement approved by the Board not only provided for pricing terms with respect to the primary twenty (20) year term of the agreement but also provided for how the pricing would be calculated should the customer exercise the option to continue with the service beyond the original term of the contract. The Original Agreement provided that, should the owner of the Cogeneration Facility exercise the option to continue the service past the original term, the customer would be charged a rate based on the residual value of the facilities that was specified as \$11.6 million, plus any appropriate Operating and Maintenance ("O&M") expenses. Those values are included in the Capacity Agreement unless it can be shown that the costs or parameters of the service to the customer have changed significantly from those envisioned when the Board approved the Original Agreement, we would be reluctant to modify what was agreed to and approved by the Board in 1989. The record in this case has not established any significant change in costs or other circumstances that would cause the Board to revise what was envisioned in the Original Agreement.

Rather, the record reflects that the charges to the customer fully recovered the estimated costs of the facilities used to provide the service over the course of the Original Agreement. Revenues received from the service have been and will continue to be treated as margin revenue. As such, the revenues from the service will be credited to the Company's other firm customers subsequent to the Company's next rate case, just as the revenues from this service have been credited to system customers since the Company's last rate case. The Company's firm customers thus continue to benefit from the agreement as proposed.

Moreover, the Board is not persuaded by the quid pro quo argument raised by Rate Counsel which led to its conclusion that the discounted rate in the Capacity Agreement is not consistent with the value of the service that will be provided to the Cogeneration Facility under the Capacity Agreement. Rate Counsel interprets the revised language under the Capacity Agreement with respect to interruptions as less onerous on the Cogeneration Facility than the existing Relinquishment of Capacity language under the Original Agreement, and therefore concludes that NJNG's right to interrupt will be more limited overall providing the Cogeneration Facility with firm service at less than interruptible prices. Although the modified language in the Capacity Agreement will not require NJNG to pay Lakewood for its incremental costs during interruptions and will not limit interruptions to thirty (30) days per operating year, Rate Counsel further concludes that the value of service under the Capacity Agreement is akin to the same interruptibility as a "full freight" firm customer. The Board does not agree with Rate Counsel's assessment of the modifications of the agreement. The Original Agreement did not indicate that the Cogeneration Facility would be interrupted for thirty (30) days but rather limited the Company to thirty (30) days of interruption per year of what was described as firm service. The

terms of the Capacity Agreement indicate that because interruptions are no longer limited to thirty (30) days, the provision of capacity to the Cogeneration Facility could in fact be interrupted more than thirty (30) days.

While the basis for interruptions is less general than under the Original Agreement, the Cogeneration Facility can be interrupted for an indeterminate number of days and times, and thus there is an incremental risk placed on the Cogeneration Facility that the Board cannot ignore in valuing the level of service to be provided. If the Cogeneration Facility is dispatched by PJM at the same time it is interrupted by NJNG, there could be increased operating costs for the Cogeneration Facility from switching to its alternate fuel which could be more expensive than natural gas. Although this may result in more uncertainty in operations leading to potentially an incremental cost to the Cogeneration Facility of switching to an alternative fuel, ratepayers will no longer be reimbursing Lakewood for these additional incremental expenses due to the elimination of the requirement that NJNG compensate Lakewood for any incremental costs incurred during interruptions. This additional impact on Lakewood must be considered in concert with the change in the terms of the Capacity Agreement pertaining to interruptions. Thus, the Board is persuaded by NJNG's argument that provision 9.1 (c) allows for unlimited interruptions, if, in NJNG's sole discretion, it believes to do so would lessen or prevent an emergency condition. NJNG monitors and evaluates whether allowing the Cogeneration Facility to operate would cause an unacceptable pressure condition downstream (emergency) of the plant. The Cogeneration Facility is not allowed to operate or will be interrupted if such a condition is created. Thus, Lakewood is appropriately paying for its share of system costs based upon the costs it incurred on the system and the value of service it is receiving.

Therefore, the Board **FINDS** that the value of service to be provided under the Capacity Agreement has not substantially changed to warrant an abrogation of the Original Agreement which called for an extension with certain pricing terms that are appropriately captured in the proposed Capacity Agreement. To do otherwise could have an impact on customer benefits derived under the Original Agreement and anticipated to continue under the Capacity Agreement. The Company's Basic Gas Supply Service ("BGSS") customers have benefited from the service to the Cogeneration Facility, since 85 percent of the margins from the off-system sales by NJNG to the Cogeneration Facility are credited to the BGSS customers. Sales to the Cogeneration Facility have increased in recent years and the margins credited to BGSS customers have also increased. While it is impossible to know what the level of volumes will be in the future, past experience suggests that the BGSS customers will continue to benefit from the sales contemplated by the Capacity Agreement.

The Cogeneration Facility was constructed pursuant to PURPA which also required JCP&L to purchase the power from the Cogeneration Facility under a PPA which, in this case, was for twenty (20) years. Although the PPA has expired, the Cogeneration Facility remains a viable source of power into the PJM grid and can provide benefits for New Jersey electric customers and can assist the State in meeting the directives in the EMP. Because the Cogeneration Facility is a power source east of the Delaware River, and, in particular, is located on the eastern side of New Jersey, it can assist in alleviating the congestion pricing which is primarily driven by transmission constraints to the west.

Moreover, under the Global Warming Response Act, L. 2007, c.112, New Jersey is required to stabilize statewide greenhouse gas emissions to 1990 levels by 2020, followed by a further reduction from all sources to eighty (80) percent below 2006 levels by 2050. In concert with reliability and economic planning criteria and the long-range goals of the Global Warming

Response Act, New Jersey had to formulate a vision of what its energy infrastructure will ultimately consist of in the first half of the 21st century, and did so through adoption of the EMP.

The EMP supports a goal of securing 70% of the State's energy needs from "clean" energy sources by 2050. This goal will be achievable if the definition of clean energy is broadened beyond renewables to encompass generation from natural gas power plants, which are less carbon-intensive than coal and other fossil fuels, as well as nuclear power, which is carbon-free. EMP at 3. Natural gas-fired combined cycle plants provide increasing amounts of mid-merit generation due to their high efficiency and low fuel prices. The majority of the merchant combined cycle plants were added elsewhere in PJM, not in New Jersey. Given the high efficiency, low capital cost, low operating cost, low water usage, low emissions and use of less carbon-intensive fuel, New Jersey encourages natural gas generation development. System reliability should be enhanced, and material ratepayer savings are expected. The EMP recognizes the environmental benefits from natural gas fired generation with respect to lower pollutants and greenhouse gases. More reliance on natural gas fired generation is expected to result in lower nitrogen oxide and sulfur dioxide across the PJM region and New Jersey. EMP at 79.

Based upon these findings and the benefits to New Jersey, the Board is satisfied that the discounted rates under the Capacity Agreement are consistent with the level of service provided and are just and reasonable.

Therefore, the Board **HEREBY FINDS** that the Capacity Agreement as amended is consistent with the goals set forth in the EMP, and that the discounted rate under the Capacity Agreement will result in lower operating costs to the Cogeneration Facility, thereby enhancing its competitiveness in the electric markets and potentially improving its ability to be dispatched in PJM.

The Board **HEREBY FINDS** the terms and conditions contained in the Capacity Agreement, as amended, to be just and reasonable. Accordingly, the Board **HEREBY APPROVES** the extension of service to the Cogeneration Facility under the terms of the Capacity Agreement effective as of July 1, 2015, for a twenty (20) year term ending on June 30, 2035.

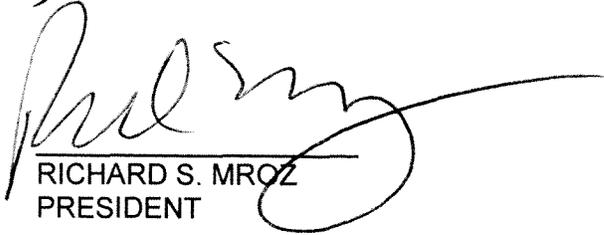
With respect to the request for confidential treatment of certain information that is claimed to be commercially sensitive or proprietary, the Board **HEREBY FINDS** that this issue should be decided by the Board's Custodian of Records pursuant to the Board's regulations, if and when a request for release of such data is made under the Open Public Records Act pursuant to N.J.A.C. 14:1-12.

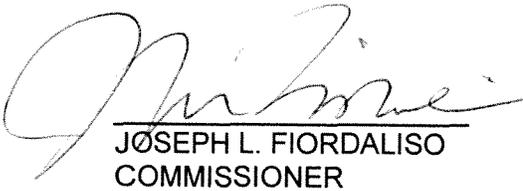
This Order shall be effective as of June 26, 2015.

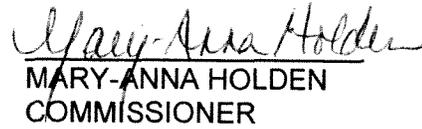
DATED:

June 18, 2015

BOARD OF PUBLIC UTILITIES
BY:

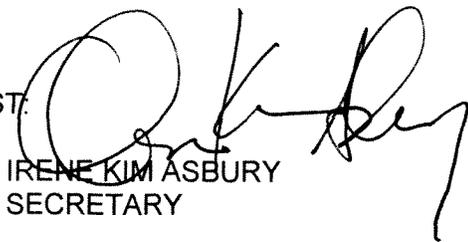

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

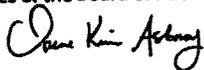

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
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 NEW JERSEY NATURAL GAS COMPANY AND
LAKEWOOD COGENERATION, L.P. FOR (1) APPROVAL OF A CAPACITY AGREEMENT
BETWEEN LAKEWOOD, L.P. AND NEW JERSEY NATURAL GAS COMPANY AND (2) A
PROTECTIVE ORDER AND EXEMPTION FROM PUBLIC DISCLOSURE OF CONFIDENTIAL
INFORMATION

DOCKET NO. GO14101149

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