Agenda Date: 2/27/19
Agenda Item: 2M

STATE OF NEW JERSEY

Board of Public Utilities
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Trenton, New Jersey 08625-0350
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ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION TO REOPEN THE PROVISION OF BASIC GAS SUPPLY SERVICE PURSUANT TO THE ELECTRIC DISCOUNT AND ENERGY COMPETITION ACT, N.J.S.A. 48:3-49 ET SEQ., AND ESTABLISH GAS CAPACITY PROCUREMENT PROGRAMS	)	DECISION AND ORDER DOCKET NO. GO17121241

Parties of Record:

Murray E. Bevan, Esq., Bevan, Mosca & Giuditta, P.C., on behalf of Retail Energy Supply Association
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On November 27, 2017, the Retail Energy Supply Association ("RESA") filed a petition ("November Petition") with the New Jersey Board of Public Utilities ("Board") seeking to reopen the In re the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., Docket No. GX01050304, and open a separate formal proceeding to establish a mechanism for the release of gas capacity to the State's third party suppliers ("TPSs") by the four gas distribution companies: Elizabethtown Gas Company ("ETG"), New Jersey Natural Gas Company ("NJNG"), South Jersey Gas Company ("SJG"), and Public Service Electric and Gas Company("PSE&G"), (collectively "GDCs").

On March 5, 2018, RESA filed an amended petition ("Amended Petition") with the Board seeking to clarify RESA's request for a proceeding and limit the scope of the proceeding to the development of gas capacity release programs in all of the GDC territories in New Jersey.

BACKGROUND

By Order[1] dated January 6, 2003, the Board approved a pricing structure ("BGSS Pricing Structure") for Basic Gas Supply Service ("BGSS"). The BGSS Pricing Structure was

[1] In re the Provision of Basic Gas Supply Service Pursuant to the Electric Discount and Energy Act, N.J.S.A. 48:3-49 et seq. – BGSS Pricing, BPU Docket No. GX01050304 (January 6, 2003) ("January 2003 BGSS Order").

developed by a Gas Policy Group that was convened by Board Staff ("Staff") at the direction of the Board. The Gas Policy Group included Staff, the Division of the Ratepayer Advocate [predecessor to the New Jersey Division of Rate Counsel ("Rate Counsel")], the GDCs, and other interested entities including TPSs. The BGSS Pricing Structure was refined and submitted to the Board as a joint settlement with no known opposition by Staff, Rate Counsel, and the four GDCs. The approved BGSS Pricing Structure provided for Periodic BGSS pricing for residential customers and some small commercial customers and Monthly Pricing for commercial and industrial customers. The January 2003 BGSS Order did not address capacity release issues. It did, however, state that "the Board reserves the right to revisit and/or modify its decision in this matter at any time upon notice to the parties should circumstances so warrant." (January 2003 BGSS Order at 5).

RESA Amended Petition

In the Amended Petition, RESA posits that the New Jersey retail gas supply market has changed significantly since the January 2003 BGSS Order and that a review of New Jersey's retail gas market is long overdue. RESA states that the current GDC gas capacity release programs have not been investigated or reviewed in a focused Board proceeding in over a decade and that because of this they are generic and outdated and they are not well-subscribed, utilized, or easily understood by the TPSs. (Amended Petition at 4). RESA claims that gas capacity in New Jersey is fully subscribed by the GDCs and that TPS customers are subject to the transportation costs of the GDC asset portfolio. Because TPSs must purchase their own capacity to transport gas to the city gate for their customers, RESA concludes that the potential exists for the TPS customers to pay duplicative costs if TPS customers are also subject to the transportation costs of the GDC asset portfolio. (Ibid.) RESA's Amended Petition includes a strawman proposal that addresses the transportation aspects of a gas capacity release program. However, RESA states that this is intended as an introductory document to establish preliminary, minimum requirements for a gas capacity release program. RESA is advocating for a capacity release program that includes both transportation and storage, or a full "slice of the system" gas capacity release program. (Id. at 5-6). Some of the salient features of RESA's strawman proposal are as follows:

- Monthly, each GDC would assign its Pipeline Reservation Assets ("PRAs") to each TPS serving customers on the GDC's system based on the percentage of peak day load the TPS serves on the GDC's system.
- Each TPS would be responsible for paying the portion of the PRA costs in proportion to the amount of PRAs the TPS receives, regardless of whether the TPS utilizes the PRAs.
- The PRAs assigned to TPSs would be recallable by the GDCs in the event the TPS defaults on its obligations to serve customers.
- The monthly PRA assignments would be mandatory in the months of November through March, but a TPS would be able to reject the PRA assignments in the months of April through October.
- Regardless of whether the TPS accepted or rejected the PRA assignment, the TPS would be responsible for paying the reservation costs for its share of the PRAs.
- If the TPS rejects the PRA assignment, the GDC would release the TPS's assigned portion of the PRAs on each of the respective pipeline electronic bulletin boards ("EBBs"). The GDC would bill the cost to the TPS and credit the TPS for any release of the PRAs that the GDC was able to obtain.
- If the TPS accepts the PRA assignment, the GDC would release the capacity to the TPS by posting it on the EBB as a pre-arranged, non-biddable release so that only that TPS

could select it. The TPS would have the responsibility to pay the charges for the assigned PRAs, including pipeline reservation costs and any variable costs associated with utilizing the PRAs.

(Id. at Exhibit C).

NJUA Comments

On July 12, 2018, the New Jersey Utility Association ("NJUA"), submitted comments regarding the Amended Petition to the Board on behalf of the GDCs ("NJUA Comments"). NJUA opines that RESA's Amended Petition is meritless and should be dismissed by the Board. (NJUA Comments at 1).

Specifically, NJUA raises the following key objections with respect to the Amended Petition, amongst other issues:

- The GDCs purchase upstream firm capacity to serve their projected BGSS sales obligations, but they do not purchase it to serve TPS firm transportation customers. RESA's proposal would require the GDCs to secure incremental capacity at current market prices and release it to TPSs at the lower weighted average cost. Therefore, it would increase costs to BGSS customers for the financial benefit of the TPSs and with no requirement that the TPSs pass on that benefit to their customers (Id. at 2);
- RESA's proposal would be costly and onerous to manage, increasing costs for customers (Ibid.);
- Gas capacity in New Jersey is not fully subscribed by the GDCs contrary to RESA's assertions (Ibid.);
- The GDCs do not charge TPS customers for supply or pipeline costs and therefore, RESA's statement that the potential exists for duplicative costs is inaccurate (Id. at 3);
- RESA's proposal looks to the New York market as a model for consideration. However, the New York Public Service Commission ("NYPSC") Staff's conclusion in its March 30, 2018 report found that gas customers served by TPSs were charged $600 million more than they would have been had they remained with the utility (Id. at 2);
- The natural gas market in New Jersey is active as evidenced by the large numbers of gas TPS customers (Id. at 3);
- The GDCs have incentives to release capacity and do so whenever it is available. In addition the TPSs can secure any needed capacity on new interstate transmission projects (Ibid.); and
- The GDCs use storage to operationally manage their BGSS and balancing obligations. If they were required to release it to TPSs it would impede their ability to use it to manage their obligations to provide a fair balancing service to TPSs and maintain reliability for all customers (Id. at 4).

RESA Reply

On September 13, 2018, RESA filed a letter brief response ("RESA Reply) to NJUA's Comments. RESA's Reply included a Certification of Orlando Magnani on behalf of RESA. RESA reiterated its request for the Board to open a proceeding to create a capacity release program. Below is a summary of the key points from RESA's Reply:

- NJUA's argument that the GDCs do not have excess gas capacity to release to TPSs while still reliably meeting their respective BGSS design day loads, highlights the fact that there is no clear understanding of how much capacity the GDCs hold and whether or not there is underutilized capacity that could be more effectively used through a capacity release program, particularly since the GDCs have capacity to provide balancing services for firm small transportation customers. Further, NJUA's argument raises serious concerns about whether the necessary capacity to reliably serve New Jersey customers is appropriately aligned with the capacity that is secured by these GDCs (RESA Reply at 2);
- NJUA's claim that the GDCs would have to secure incremental capacity at current market prices and release it at the weighted average cost shows a misunderstanding of capacity release as it is usually released at maximum rates and releasing it at the weighted average cost is atypical of capacity release programs. RESA claims that releasing the capacity (for which TPSs would compensate pipelines) should not result in driving costs up for default customers. However, Mr. Magnani's certification stated that an advantage of capacity release is that all customers pay the same average price for upstream capacity (Ibid.);
- RESA states that the Board should not draw the erroneous conclusion that the NYPSC investigation and its Staff's conclusions about TPS pricing are related to gas capacity release or the capacity release program offered in New York (Id. at 4);
- Opening an investigation would provide the Board with the opportunity to make changes that potentially could improve current capacity dynamics (Ibid.);
- TPSs may be able to secure gas capacity on new natural gas interstate transmission projects when they occur, however, the challenge is securing gas capacity on existing gas transmission lines as many, if not all, points are fully subscribed, or nearly so. Limiting TPSs ability to secure gas capacity to only new projects ensures that they will not effectively grow their market share and serve customers in a competitive fashion (Id. at 6);
- RESA questions the competitive nature of the no-bid contracts the GDCs have with their affiliates and states that it is not clear if capacity is part of the these contracts. RESA questions PSE&G's reliance on its sole source gas supply contract which it awards to its affiliate on a no-bid arrangement (Id. at 7-8); and
- RESA understands that the GDCs utilize storage to manage their BGSS load. RESA members do not know how much storage or capacity the GDCs purchase, how it is utilized and, without the requested proceeding, are unable to ensure that these costs are equitably managed in the most efficient manner (Id. at 10).

DISCUSSION AND FINDINGS

Prior to the deregulation of the natural gas market, the GDCs were responsible for securing sufficient capacity to meet the needs of all of their firm customers. Once the market was deregulated, customers migrated to transportation service and the utilities were incentivized to not just release, but permanently shed excess capacity, and they have done so. In its comments, NJUA stated that the GDCs have firm upstream capacity for BGSS sales obligations, but not sufficient capacity to serve the entire load for TPS firm transportation customers. Accordingly, RESA's proposal would require the GDCs to secure incremental capacity at current market prices. RESA proposes that the capacity be released at the price that the pipeline would be paid for the capacity, and not a weighted average cost. However, some of the capacity that would be released to the TPSs would be the newer capacity and some of it would be the capacity that the GDC already has secured. Likewise, the capacity mix that the BGSS customers pay for would now have some of the newer capacity included in it. In addition, the GDCs would incur new costs associated with procuring capacity for TPS customers, which is presently the responsibility of the TPSs. Therefore, assuming that the new capacity is more expensive than the existing capacity, on its face it seems likely that BGSS customers would pay higher prices under RESA's proposal.

RESA states that there are serious concerns about whether the necessary capacity to reliably serve New Jersey customers is appropriately aligned with the capacity that is secured by the GDCs. RESA states that the Board, as well as RESA and TPSs in general, do not have a clear understanding of the specific gas capacity purchased by the GDCs and how it is used to serve customers.

While RESA does not speak for all of the TPSs serving customers in New Jersey, RESA's proposal to have the GDCs secure the capacity for TPS customers implies that the TPSs in New Jersey may not have secured capacity to meet their customers' total needs. The GDCs have stated that they have not secured supply for the TPS customers. Based upon this representation, the Board shares RESA's concerns regarding whether or not sufficient capacity has been secured to serve all of New Jersey's firm natural gas customers.

However, the Board **FINDS** that RESA has not demonstrated that the utilities have sufficient gas capacity to create the type of capacity release program that RESA is proposing, nor has RESA clearly identified the impact that creating such a program would have on BGSS customers. In addition, the Board believes it would be prudent to consider the effectiveness of energy competition, by exploring if and to what extent TPSs are saving customers money on their natural gas supply, prior to considering any major changes to the January 2003 BGSS Order or the GDCs' current gas capacity release programs.

Based upon the foregoing concerns regarding the sufficiency of secured gas capacity for New Jersey's customers, the Board **HEREBY OPENS** a stakeholder proceeding and **HEREBY DIRECTS** Board Staff to open a new docket, notify all affected parties, and post notice of this proceeding on the Board's website. The stakeholder proceeding will explore whether sufficient capacity has been secured to serve all of New Jersey's firm natural gas customers as well as whether and to what extend TPSs are saving customers money on their natural gas supply. The new proceeding would include Staff, Rate Counsel, and the GDCs. It would also include any TPSs or other interested parties that choose to participate. The purpose of the new proceeding would be to explore gas capacity issues and the related issue of savings achieved by residential customers served by TPSs.

Accordingly, given the Board's findings above, the Board **HEREBY DIRECTS** Staff to close the instant proceeding in Docket No. GO17121241.

This Order shall be effective March 9, 2019.

DATED: 2\27\19

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BY:

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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.

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DOCKET NO. GO17121241

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