Agenda Date: 5/23/12
Agenda Item: 2G

# STATE OF NEW JERSEY

**Board of Public Utilities**
**44 South Clinton Avenue, 9th Floor**
**Post Office Box 350**
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**www.nj.gov/bpu/**

ENERGY

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| IN THE MATTER OF THE GENERIC PROCEEDING TO CONSIDER PROSPECTIVE STANDARDS FOR GAS DISTRIBUTION UTILITY RATE DISCOUNTS AND ASSOCIATED CONTRACT TERMS AND CONDITIONS; PUBLIC SERVICE ELECTRIC AND GAS COMPANY'S COMPLIANCE FILING TO IMPLEMENT THE TARIFF CHANGES | ORDER<br><br>DOCKET NO. GT11090616 |

**Stefanie A. Brand, Director,** New Jersey Division of Rate Counsel
**Kenneth T. Maloney**, Cullen and Dykman LLP on behalf of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company
**David K. Richter**, Assistant General Regulatory Counsel PSE&G
**Tracey Thayer**, Director, Regulatory Affairs New Jersey Natural Gas
**Ira G. Megdal, Esq.**, Cozen O'Connor, on behalf of South Jersey Gas Company
**Murray E. Bevan**, Bevan, Mosca, Giuditta & Zarillo, P.C., on behalf of the Electric Customer Group
**James H. Laskey,** Norris McLaughlin & Marcus, P.A., on behalf of the Independent Energy Producers of New Jersey
**Jeffrey W. Mayes,** General Counsel, Monitoring Analytics, LLC Independent Market Manager for PJM
**Catherine E. Tamasik** , DeCotiis, FitzPatrick & Cole, LLP, on behalf of North American Energy Alliance / Ocean Peaking Power, LLC
**Steven S. Goldenberg**, Fox Rothschild LLP, on behalf of the New Jersey Large Energy Users Coalition

BY THE BOARD[1]:

On October 25, 2010, the New Jersey Board of Public Utilities ("Board") issued a notice opening a review of off-tariff agreements offered by the gas utilities ("GDCs") to customers with the ability to physically by-pass the GDCs' distribution and/or transmission systems, as well as for other economic reasons. After a series of stakeholder meetings and the submission of comments and reply comments, by Order dated August 18, 2011 in Docket No. GR10100761, the Board directed the GDCs to file tariffs that set forth the criteria that the company will use to determine whether to offer a discounted rate, as well as the minimum information that a gas

[1]Commissioner Joseph L. Fiordaliso was the hearing officer in this proceeding.

customer must provide when requesting a discounted rate from a GDC. Further, the GDCs were to describe the application process.

On September 16, 2011, Public Service Electric and Gas Company ("PSE&G") submitted proposed tariff sheets; PSE&G entitled its filing "Contract Gas Service ("CGS") Rate Schedule describing the basis for consideration of discounted rates and the minimum information that a customer must produce when requesting a discounted rate. Board staff circulated the proposed tariff sheets to the service list for comment.

The New Jersey Large Energy Users Coalition ("NJLEUC"), in its comments submitted on November 8, 2011, noted multiple concerns with the Company's compliance filing. NJLEUC contended that the proposal would act as a deterrent for customers to explore bypass related discounts. PSE&G's tariff was characterized by NJLEUC as a "one size fits all" approach to bypass, and urged the Board to reject it. NJLEUC contended that general criteria cannot be applied to discount rate cases due to the unique circumstances surrounding each customer. NJLEUC also contended that the Company's proposed tariff lacks transparency and erects an impenetrable barrier to any customer seeking to evaluate how the rates and charges included in the tariff would compare to the costs associated with the bypass.

In its November 28, 2011 reply comments, PSE&G disputed NJLEUC's claims and contended that the CGS Rate Schedule will enhance the customer's understanding of the discounted rate process. The Company argues that the CGS Rate Schedule would provide the appropriate level of information necessary for all customers to understand how to apply for a discounted rate and what the approximate amount of the discount would be prior to starting the process.

The Division of Rate Counsel ("Rate Counsel"), in its reply comments filed November 28, 2011, objected to the use of what is described as a "formulistic" approach to determining the rate discount based on the ability to physically bypass the Company's distribution system. Rate Counsel recommended that the Company file tariff sheets similar to those filed by the other three gas utilities. Rate Counsel also objected to the Company's proposal to apply its new CGS only to very large customers using at least 150 therms per hour. Rate Counsel contended that the discounted rate contract should be available to any and all customers seeking discounted rates. Rate Counsel also contended that the Company's proposal is inconsistent with the Board's intent to limit rate discounts to circumstances where discounts are necessary to preserve or create revenues for the benefit of the utility's other customers. Rate Counsel also objected to the Company's request for the Board to determine the rate treatment of revenues under the new discount rate schedule.

Subsequent to Rate Counsel's original comments, it engaged in discussions with PSE&G and Board Staff and reached a resolution of issues. PSE&G submitted an amended filing on February 21, 2012. PSE&G's amended filing made the following changes that resolved Rate Counsel's concerns: (1) the Company's amended filing is applicable to any customer requesting a discount, not just large volume customers; (2) the Company's amended filing includes language that provides for rate discounts for reasons other than physical bypass but only if necessary to prevent economic bypass or the loss of load that would otherwise be served at a rate that would exceed marginal costs; (3) the Company's amended filing modified its approach to discounts based on physical bypass by a) making the discounted distribution and maintenance charges volumetric rather than fixed monthly fees; b) taking into account the operational and delivery advantages of receiving distribution service compared to direct interconnection with the interstate pipeline; c) requiring that the customer's election of the term of the contract with PSE&G must be supported by an offer of financing from an interstate pipeline over the same term; and d) requiring that the formulas be updated every two years to assure they remain consistent with market conditions. The Company's amended filing makes clear that only the discounted rate itself would automatically be made public after Board approval, with the customer retaining the right to request confidential treatment of other information according to the Board's regulations. In its March 1, 2012 comments, Rate Counsel withdrew its objections to the Company's proposed formula approach as modified, and to the ratemaking treatment of revenues.

On March 1, 2012, NJLEUC also submitted comments with respect to PSE&G's amended filing. NJLEUC continues to urge the Board to reject the Company's filing. NJLEUC contends that the Company's filing represents an uninvited, unwelcome, and unprecedented departure from both the letter and spirit of the Order and the Board's historic treatment of utility bypass agreements. NJLEUC contends that the Company's proposed rate schedule would reject the Board's case-by-case, negotiated rate approach in favor of a "one size fits all" prescriptive tariff approach that would be presented to customers essentially on a "take it or leave it" basis. NJLEUC urges the Board to reject PSE&G's compliance filing, contending that PSE&G flouts the Order by offering a deliberately unattractive service that will have the perverse effect of incentivizing customer to bypass the utility system rather than "negotiate" with the utility. NJLEUC contends that the amended filing continues to utilize a complex formulaic approach to the proposed rates that lacks transparency and provides no insight regarding how specific rates were established. NJLEUC urges that the new tariff service should be addressed in a rate case, where the proposed rates and terms and conditions of service would be subjected to the level of scrutiny they clearly warrant. NJLEUC then goes on to present a bypass case study showing how it was unlikely that PSE&G's CGS rate would result in a discount from its existing TSG-NF rate. NJLEUC recommends that the Board require PSE&G to adopt what it calls the traditional approach utilized in the past Board approved agreements.

## DISCUSSION AND FINDING

The Board has reviewed the February 21, 2012, amended filing made by PSE&G. It appears that the only party objecting to PSE&G's amended filing is NJLEUC. After considering all of the submissions, the Board FINDS that the Company's proposal provides the necessary flexibility for customers who might otherwise bypass the system to continue to obtain service from the Company at a rate that may obviate the need to bypass service from the Company. The resulting rate will still provide a benefit for the other customers on the Company's system in keeping with the Board's August 18, 2011 Order.

The proposed Alternative Delivery Cost mechanism is associated with a physical bypass only, and the discount in this case should be related to the cost of the physical bypass. NJLEUC's physical bypass study, in our view, actually provides support for PSE&G's approach to the calculation of the Alternate Delivery Cost. The appropriate economic analysis related to physical bypass feasibility requires that the anticipated investment cost be discounted over the financing term to obtain a present value which can then be converted into an annual levelized revenue requirement. Dividing annual levelized revenue requirement by the expected annual throughput results in a unit rate that should be reflective of the required discount rate. In contrast, NJLEUC's position is that the capital cost of the project should be divided by the estimated throughput volumes over the expected project life. This approach ignores the need to factor in a return on as well as a return of the capital investment when analyzing economic alternatives. We therefore believe that NJLEUC's alternate method does not comport with appropriate economic analysis.

In the course of our review of the Company's amended filing, we found certain provisions that need to be clarified. The Company's Exhibit A includes its proposed tariff sheets. Page 1 of that exhibit (Original Sheet 112) includes language setting forth the minimum information a customer requesting a discounted rate based on an economically viable bypass alternative must submit to the Company. One requirement is for a statement from the interstate pipeline entity that the bypass is viable. This language is too vague and arguably cedes too much control to the interstate pipeline entity. Instead the tariff should include the following language: "a statement from the interstate pipeline entity that the proposed interconnection is operationally viable and that the pipeline can effectuate service is requested." The Company should also make clear that the sections of the proposed tariff on page 3 of 12 of Exhibit A (Original Sheet No. 112A) concerning the applicability of the Societal Benefits Charge and the RGGI Recovery Charge, do not apply to customers who are exempt from such charges under N.J.S.A. 48:3-60.1. The proposed tariff on page 5 of 12 of Exhibit A (Original Sheet No. 112B) setting forth other considerations with respect to delivery charges, should be clarified to reflect that the charges be sufficient to recover revenues in excess of marginal costs. Finally, on Exhibit B [Application For Contract Gas Service (CSG)], the references to the interruptibility of service should include language that says "for terms of interruptible service, see specific tariffs."

Accordingly, the Board HEREBY ORDERS PSE&G to file revised tariffs that incorporate the above clarifications within five days of the service of this Order, to be effective for service rendered on or after June 1, 2012.

DATED: 5/23/12

BOARD OF PUBLIC UTILITIES
BY:

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PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

MARY-ANNA HOLDEN
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

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