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January 22, 2016

Via Electronic Mail and Hand Delivery

Hon. Dianne Solomon
New Jersey Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
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Re: I/M/O the Petition of New Jersey Natural Gas Company for Determination
Concerning the Southern Reliability Link pursuant to N.J.S.A. 40:55D-19
and N.J.S.A. 48:9-25.4
BPU Docket No.: GO15040403

Dear Commissioner Solomon:

Kindly accept this letter brief in lieu of a more formal brief by the New Jersey Division of Rate Counsel ("Rate Counsel") in accordance with the provision in the December 10, 2015 Board of Public Utilities ("Board") Order in the above matter.¹

Rate Counsel is the administrative agency charged under New Jersey law with the general protection of the interests of utility ratepayers. N.J.S.A. 52:27E-50 et seq. In that capacity, it is a party to all proceedings before the Board. N.J.S.A. 52:27EE-48, -55.

Introduction

Rate Counsel contends that the Company has not provided sufficient evidence to allow the Board to determine that the cost of the Southern Reliability Link ("SRL") Project is "reasonably necessary" pursuant to the New Jersey Supreme Court's interpretation of N.J.S.A.

¹ This brief is only addressing the cost aspect of this proceeding, not the proposed route.

Procedural History

On April 2, 2015, New Jersey Natural Gas (“NJNG or “Company”) filed a petition with the Board pursuant to N.J.S.A. 40:55D-19 of the New Jersey Municipal Land Use Law and N.J.S.A. 48:9-25.4 to construct the Southern Reliability Link pipeline to connect the natural gas system in Ocean, Burlington, and Monmouth Counties to a new supply point with the Transcontinental Pipe Line Company in Chesterfield, New Jersey. The Company represents that this will prevent supply interruption or system failure and create a redundant major feed to support safe, reliable, and resilient delivery of natural gas to those counties. On May 29, 2015, the Board retained this matter and set a June 30, 2015 deadline to file motions to intervene and participate. On June 18, a Prehearing Order was issued with an accompanying procedural schedule with hearings scheduled for December 1 and December 7, 2015. Public hearings in this matter were held on July 28, 2015 at 3:00 PM and 6:00 PM at the Manchester Municipal Building Manchester, New Jersey and on August 26, 2015 at 6:00 PM at Rowan College in Mount Laurel, New Jersey. On July 21, 2015, the Burlington County Board of Chosen Freeholders, Township of Chesterfield, and Township of North Hanover were each granted Motions to intervene in the matter. Motions to participate were granted to Pinelands Preservation Alliance and the Township of Plumsted. An evidentiary hearing occurred on December 7, 2015 as the December 1 date had been adjourned. At that hearing, Rate Counsel waived its right to present live testimony and waived its right to cross examine witnesses. On January 5, 2016 the Board issued an Order modifying the procedural schedule to establish a January 22, 2016 due date for post-hearing initial briefs with reply briefs due by January 29, 2016.

ARGUMENT

Cost should be part of the necessity analysis of a Pipeline Project

The standard of review in this matter is set forth in N.J.S.A. 40:55D-19 and provides that when a public utility proposes a project through multiple municipalities, the Board may grant the petition after hearing and notice to all interested parties if:

The land described in the petition is necessary for the service, convenience or welfare of the public ... that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and that no alternative site or sites are reasonably available to achieve an equivalent public benefit, the public utility ... may proceed in accordance with such decision of the Board of Public Utilities, any ordinance or regulation made under the authority of this act notwithstanding.

The New Jersey Supreme Court interpreted N.J.S.A. 40:55-50, the statutory predecessor to N.J.S.A. 40:55D-19² and set forth :

The particular site or location must be found to be ‘reasonably necessary’ ... [and a]lternative sites and their comparative advantages and disadvantages, **including cost**, must be considered in determining reasonable necessity.” In Re: Public Service Electric & Gas Co., 35 N.J. 358, 377 (1961) (emphasis added).

The Board continues to apply the Court’s interpretation of the preceding statute to the current N.J.S.A. 40:55D-19. In 2012, the Board analyzed the reasonableness of the cost where an upgraded transmission line was proposed to transverse multiple municipalities. I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 Re: North Central Reliability Project, BPU Docket No.

² The pertinent language of the previous N.J.S.A. 40:44-50 was substantially similar to the current N.J.S.A. 40:55D-19 and stated in part: “the board of public utility commissioners shall after a hearing, of which the municipality affected shall have notice, decide that the present or proposed situation of the building or structure in question is reasonably necessary for the service, convenience or welfare of the public.” New Jersey Natural Gas Co. v. Borough of Red Bank, 438 N.J. Super. 164, 180 (App. Div. 2014).

EO11050323 (June 18, 2012). The Board stated that it “must consider the cost that New Jersey electricity customers will bear in connection with the Project.” Id. at p. 28. The Board stated that there was evidence entered demonstrating that the expected cost of the project would be \$340 to \$390 million and there was evidence as to the direct and indirect effects of the project on the economy. Ibid. Additionally, the Board evaluated evidence of “the scope and scale of the work involved” to ultimately find that the cost allocation to ratepayers was reasonable. Ibid.

Other cost allocation analyses by the Board pursuant to N.J.S.A. 40:55D-19 have focused on whether the benefits to ratepayers outweigh the cost and whether the cost of the project is less than a specific alternative. Recently, the Board concluded that although the approximate project budget of \$91 million for a gas pipeline would likely be exceeded, the final cost would likely be less than the projected \$145 million cost of a transmission project which would achieve the intended redundancy for the area.³ In considering a proposed electric transmission project, the Board found that:

[T]he record amply demonstrate[d], the project is needed to remedy reliability criteria violations that, if not addressed, could lead to outages for over 100,000 JCP&L customers. The Board concludes that the proposed line is cheaper than the alternatives, in large part because existing rights of way will be utilized, and the testimony in support of the Project was not refuted.⁴

Moreover, the Appellate Division has agreed with the Board where it found that an approximate \$2.00 per month increase to ratepayers would “avoid reliability violations, and consequent brownouts and blackouts and damage to the infrastructure.” In re Public Service Electric and

³ I/M/O the Petition of South Jersey Gas company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19, BPU Docket No. GO13111049, p. 50 (December 16, 2015).

⁴ I/M/O the Petition of JCP&L Co. Pursuant to N.J.S.A. 40:55D-19 for a Determination that the Oceanview 230 KV Transmission Project is Reasonably Necessary for the Service Convenience or Welfare of the Public, BPU Docket No. EO14030281 p. 41 (January 21, 2015).

Gas for a Determination Pursuant to the provisions of N.J.S.A. 40:55D-19, LEXIS 304, 33 (App. Div. 2013).

Accordingly, Rate Counsel submits that pursuant to N.J.S.A. 40:55D-19 and its subsequent legal interpretations, the Board is required to consider the costs of the SRL in its determination of whether the land use for the project is necessary for the service, convenience and welfare of the public.

The Cost of the Pipeline has not been adequately determined

In the instant case, NJNG has not submitted to the Board clear evidence of the projected cost and scope of the project nor has it demonstrated that the cost outweighs the benefit of the line or alternative cost scenarios if the line was not built. The Company's most recent estimate for a 30-inch pipeline was in the range of \$130 to \$160 Million, but it readily admitted that a new estimate would be developed by an engineering consultant which has not yet been completed.⁵ Written Rebuttal testimony of Craig A. Lynch from NJNG states that the "estimates are based upon the best information the Company has to date. The company is unable to issue an RFP for the engineering construction work until a final route determination has been made by the BPU." Written Rebuttal Testimony of Craig A. Lynch, RT13, L15-18⁶. Therefore, according to the Company's own admission, the cost cannot be determined until the companion case to this matter, I/M/O The Petition of New Jersey Natural Gas Company for Approval and Authorization to Construct and Operate the Southern Reliability Link Pursuant to N.J.A.C. 14:7-1.4, BPU Docket No. GE15040402 ("Companion Case"), is resolved. Until that time, the Board cannot begin to adequately evaluate one of the essential components in this matter: the cost.

⁵ Company Response to RCR-ENG-7b.

⁶ For the purposes of this brief, Rebuttal Testimony of Mr. Lynch will be referred to as "RT."

Mr. Lynch states in his Rebuttal Testimony that “the Company disagrees with Rate Counsel’s cost estimates.” RT13, L10-11. Mr. Lynch fails to state exactly where the Company differs with Rate Counsel with regard to cost estimates. The Company stated that the total cost estimation range of \$130 to \$160 Million for the SRL was developed with comparisons to recent 20-inch and 24-inch projects and prorated to 30-inches, but that another estimate is in process.⁷ Rate Counsel Expert Edward A. McGee provides a more detailed analysis in his written October 23, 2015 Direct Testimony and, unlike the Company’s discovery response to RCR- ENG-7b regarding cost projections, Mr. McGee provided factual support for his conclusions. Mr. McGee compared the SRL to a 2012 24-inch line in Southern New Jersey and demonstrated how to prorate the cost to 30 inches and factor up for \$2016. Written Direct Testimony McGee, DT9, L6-17.⁸ Mr. McGee concluded that the project was more likely going to cost between \$140 to \$180 Million. Ibid. and McGee Schedule EAM-2. This estimate appears certainly more reliable than the imprecise assertions made by the Company.

The Company has not provided other cost scenarios to demonstrate that the line is less costly than alternatives and it has not provided comprehensive information regarding lasting effects on the local and state economy to reasonably compare the scope and scale of the project. At this juncture, Rate Counsel cannot make an informed recommendation to the Board regarding whether the proposed cost of the line is reasonably necessary. The lack of demonstrated need for a 30-inch diameter line and the claims that more accurate cost estimates will be provided later improperly shifts the burden to Rate Counsel to determine what costs will be borne by ratepayers. Although Rate Counsel has attempted to uncover what the expected costs will be, the

⁷ Company Response to RCR-ENG-7b.

⁸ For the purposes of this brief, Mr. McGee’s written direct testimony will be referred to as “DT.”

exact figure has not been provided by the Company and presumably this is in part because the route of the line is still undetermined.

Therefore, the record is devoid of the proper evidence to determine whether the cost is reasonably necessary pursuant to the New Jersey Supreme Court's interpretation of N.J.S.A. 40:55D-19. Rate Counsel requests that the Board reserve judgment on this matter and require more accurate cost estimates of the line after the Companion Case regarding the pipeline's route is resolved.

Ratepayers should not be charged the full cost for a 30-inch vs. 24-inch Pipeline

In Mr. McGee's Direct Testimony, it is clear that only a portion of the proposed line should be borne by ratepayers. While the Company has proposed an oversized 30-inch-diameter line, according to their own calculations, a smaller 24-inch would be sufficient to move the maximum amount of gas permitted by the Firm Transportation ("FT") contract with the connecting interstate pipeline. DT5, L9-16.

The Company can only pass on costs to ratepayers which are deemed "used and useful in the public service." Atlantic Cty Sewerage Co., v. Bd. Of Public Utilities Comm'rs, 128 N.J.L. 359, 365 (1942); In re: petition of Jersey Central Power & Light Co., 85 N.J. 520, 529 (1981). In determining reasonable utility costs, there is necessarily an analysis of whether "an excessive valuation or [utility] property not used or useful in the rendition of the service ... would lay upon the individual user a burden greater than the reasonable worth of the accommodation thus supplied." In re Proposed Increased Intrastate Industrial Sand Rates, 66 N.J. 12, 22 (1974) quoting Atlantic City Sewerage Co. at 366. In this case, the Company has not provided evidence to support that the entire width of the line would be "used and useful."

The Company offers three reasons as it attempts to explain why it selected the larger-diameter line. The first reason is that it was selected by performing “iterative flow modeling of our existing system with various demand and supply configurations under design day conditions with the SRL in place.” DT6, L8-10. However, the Company’s own discovery responses indicate that its transmission system has a Design-Day pressure of only 497 psia at the point where the SRL will connect in Manchester, NJ and that a 24-inch line would provide a pressure of 647 psia, more than sufficient to deliver the entire 180,000 Dth/Day of gas required. DT6, L20 to T7, L2.

The second reason the Company offers for the larger-sized line is that a 30-inch diameter pipeline is equal to their existing system connecting with the Texas Eastern pipeline supply in Middlesex County and other recently installed segments. DT6, L11-14. While the Company may wish to standardize the size of their lines, new pipelines should be sized to handle the flows they will transport and ratepayers should only have to pay for the minimum sized pipeline to serve their interests. The Company may choose to build the larger size, but oversizing a line is not in the interest and should not be the responsibility of ratepayers. DT7, L3-9.

The Company’s final reason is that the larger diameter will allow greater capacity from the new Transco supply in the future. DT6, L15-16. This reason is contrary to a statement made in its Original Petition: “The Southern Reliability Link Project was developed as a redundant supply line to an existing system in which additional growth of the system was not taken into account during its design.” DT7, L14-17. Accordingly, future growth cannot be part of the decision to size and allocate the costs of the line in the most economical method for ratepayers.

As Rate Counsel has stated on numerous occasions, while the Company may decide on a larger-diameter line, only the cost of the smaller-diameter line should be borne by ratepayers

since it has not demonstrated that the full width will be “used and useful.” DT8, L5-8. Mr. McGee’s testimony recommended that ratepayers should be allocated 80 percent of the cost of the 30-inch line, which is equivalent to the cost of a 24-inch pipeline that can accommodate the total amount of gas. The Company would then be solely responsible for the additional 20 percent of the cost of the 30-inch line. DT10, L1-5.

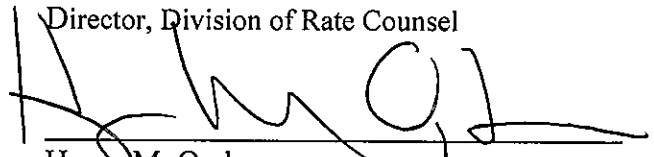
CONCLUSION

Therefore, since the Company has not provided accurate cost estimates for the project, the Board cannot determine whether the benefits of the project outweigh the cost to ratepayers and it cannot determine whether the cost is “reasonably necessary” compared to potential alternatives. Moreover, when more precise cost assessments are presented, ratepayers should only bear the cost of a 24-inch diameter pipeline, and not the proposed 30 inches, since the Company has not demonstrated that the full diameter will be “used and useful” for public service.

Respectfully submitted,

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N.J.S.A. 48:9-25.4
BPU Docket No.: GO15040403

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