



Agenda Date: 3/20/13  
Agenda Item: 2H

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE PETITION OF NEW JERSEY )  
NATURAL GAS COMPANY FOR APPROVAL OF A ) ORDER  
MUNICIPAL FRANCHISE IN THE BOROUGH OF )  
SAYREVILLE, MIDDLESEX COUNTY TO SERVE RED )  
OAK POWER, LLC ) DOCKET NO. GE12121084

**Parties of Record:**

**Andrew K. Dembia, Esq.**, on behalf of New Jersey Natural Gas Company  
**Steven S. Goldenberg, Esq.**, Fox Rothschild, LLP  
**David K. Richter, Esq.** PSEG Services Corporation, on behalf of Public Service Electric and Gas Company  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On December 17, 2013, New Jersey Natural Gas ("NJNG" or the "Company"), filed a petition requesting that the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5 approve a franchise granted by the Borough of Sayreville, Middlesex County, New Jersey ("Borough") so that NJNG can provide gas distribution service to Red Oak Power, LLC ("Red Oak"). The scope of the consent is limited solely to the Red Oak facility<sup>1</sup>.

Red Oak currently receives natural gas distribution service from Public Service Electric and Gas Company ("PSE&G"), and is situated within PSE&G's franchised service area. The initial term of Red Oak's current gas supply contract with PSEG Energy Resources & Trade ("PSEG ER&T"), and of its current gas transportation agreement with PSE&G, are due to terminate on or about October 1, 2013. To implement a construction timeline that would permit all necessary facilities for service to the Red Oak generating station to be placed in-service prior to October 1, 2013, NJNG has requested expedited treatment of its municipal consent petition.

<sup>1</sup> Under a separate petition, NJNG has requested approval of a gas service agreement, docketed as GO13010059, dependent on approval of this municipal consent. Should the Board approve this municipal consent, it will then review the terms of that proposed agreement.

According to the petition, NJNG currently provides natural gas distribution service within a limited portion of the Borough, and operates and maintains a high-pressure gas transmission main within approximately 600 feet of Red Oak's property line. NJNG has been providing natural gas distribution service and gas supply service to the GenOn Energy Inc. Sayreville generating station<sup>2</sup> since 1979, and has constructed and installed several miles of gas transmission main in the Borough, as well as a metering station and associated facilities in order to serve the GenOn Sayreville generating station.

According to NJNG, in the late 1970's – early 1980's time period, NJNG had, "... at the BPU's behest, obtained and provided substantial quantities of gas to Jersey Central Power & Light Company for use at the latter's Sayreville Generating Station, in order to ameliorate the impact of the Three Mile Island incident by assisting JCP&L in offsetting its alternate fuel and purchase power costs for the benefit of JCP&L's electric ratepayers, many of whom are gas customers of..." Petition at 3.

Red Oak currently has a tolling agreement with TAQA Gen-X, LLC ("TAQA")<sup>3</sup> whereby Red Oak, the owner of an electric generating facility, has agreed to use the generating facility to convert the natural gas fuel provided by TAQA into electric energy for delivery back to TAQA. TAQA in turn, trades that energy on the PJM, LLC<sup>4</sup> ("PJM") wholesale energy market.

TAQA has a natural gas supply contract with PSEG ER&T, an unregulated affiliate of PSE&G. According to NJNG, the initial 11-year term of this natural gas supply contract expires on or about October 1, 2013. NJNG states that TAQA has approached PSEG ER&T to negotiate updated pricing terms to apply after expiration of the supply contract's initial 11-year term and that, to date, PSEG ER&T and TAQA have been unable to negotiate mutually agreeable revised pricing terms for the gas supply agreement.

The petition further states that TAQA also has a gas transportation service agreement with PSE&G, which includes a discounted rate for the provision of interruptible transportation service by PSE&G and that PSE&G has notified TAQA that it intends to terminate TAQA's current gas transportation service agreement on or about October 1, 2013. Absent negotiation of a new discounted service rate, NJNG asserts that TAQA's current service rate would increase to the full tariff rate for interruptible transportation service under PSE&G Rate Schedule TSG-NF and that, to date, TAQA has been unable to negotiate a mutually acceptable discounted transportation rate for continued interruptible transportation service from PSE&G.

The petition maintains that based upon its inability to negotiate an acceptable extension of both its current gas supply contract with PSEG ER&T, and its current gas transportation service with PSE&G, TAQA decided to explore the potential by-pass of PSE&G's natural gas distribution system, as well as termination of the natural gas supply contract with PSEG ER&T, in order to obtain gas supply and transportation on more economically favorable terms. In TAQA's view, according to NJNG, such improved economics potentially would allow the Red Oak generating

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<sup>2</sup> The initial natural gas supply and service agreement was between Jersey Central Power & Light Company ("JCP&L") and NJNG. JCP&L has since sold the Sayreville generating station and the Sayreville generating station is currently owned by GenOn Energy Inc., ("GenOn").

<sup>3</sup> TAQA is a Delaware limited liability company having an office at 2000 Westchester Ave., Purchase, New York 10577.

<sup>4</sup> PJM is the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia, including New Jersey.

station to be dispatched by PJM more frequently because lower gas supply and transportation costs would reduce the cost of energy generated by the Red Oak station which would potentially benefit New Jersey consumers.

According to NJNG, during the spring of 2012, TAQA representatives contacted NJNG to inquire if NJNG would be willing to provide natural gas distribution service to the Red Oak generating station and provide gas supply service to TAQA. NJNG further stated that TAQA has also contacted Transcontinental Gas Pipeline Company ("Transco") to determine the feasibility of directly interconnecting with the Transco interstate pipeline system which is also in close proximity to the Red Oak property, although not as close as NJNG's gas transmission main. Notwithstanding that fact, NJNG indicated that the Company has been informed by TAQA representatives that if NJNG could not provide gas distribution service as well as gas supply service, then TAQA would pursue an interconnection with Transco.

NJNG has represented that there is adequate capacity on the existing high-pressure gas transmission main described above to serve the Red Oak generating station as well as to continue serving the GenOn Sayreville generating station.

On February 12, 2013, TAQA filed a motion to intervene. NJNG submitted a letter dated February 21, 2013, stating that it did not oppose TAQA's intervention. In addition, TAQA filed a motion for the admission pro hac vice of Paul Forshay, Esq., an attorney in good standing in the District of Columbia who has an attorney-client relationship with TAQA, and who has made the required payment to the New Jersey Lawyers' Fund for Client Protection.

On February 15, 2013, PSE&G filed a motion to intervene stating that it provides gas distribution service to Red Oak pursuant to a gas delivery contract that is due to expire in October 2013, and that it is currently in negotiations with Red Oak to continue to provide that service. PSE&G further stated that in accordance with the provisions of its Board-approved Contract Service Gas ("CSG") Tariff, Red Oak has requested a discount rate from PSE&G for delivery service based on: (a) an economically viable bypass alternative or (b) other considerations, and that, pursuant to the requirements of the Tariff, PSE&G is evaluating TAQA's CSG application. PSE&G further raised the policy considerations regarding (1) the respect to be accorded to well-established utility franchise service territories; (2) the regulatory risks associated with allowing customers to migrate from one public utility service territory to another, and (3) whether the franchise sought in the pending petition is "necessary and proper for the public convenience and will properly conserve the public interest." N.J.S.A. 48:2-14. PSE&G further argued that in order to avoid this type of occurrence from happening, PSE&G and NJNG had entered into an agreement in March 1956 setting the service boundaries of each company.

NJNG submitted a letter, dated February 27, 2013, not opposing PSE&G's intervention in addition to addressing statements made by PSE&G in its motion. By letter dated February 28, 2013, TAQA also stated that while it does not object to PSE&G's intervention in this matter, it also takes issue with many of the statements made in the company's motion.

### **DISCUSSION AND FINDINGS**

In ruling on a motion to intervene, N.J.A.C. 1: 1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. the prospect for confusion and delay arising from inclusion of the party, and
4. other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a "participant," if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

As both TAQA and PSE&G will be directly affected by the outcome of this proceeding, the Board **HEREBY FINDS** that TAQA and PSE&G have met the standards for intervention as both have an interest in this proceeding. Accordingly, the Board **HEREBY GRANTS** the motions for intervention of PSE&G and TAQA.

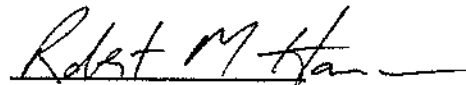
In light of this grant of intervention to TAQA, the Board has reviewed TAQA's motion and the supporting affidavit of Steven S. Goldberg, Esq., for admission pro hac vice of Paul F. Forshay, Esq., and no objections to it having been received after due notice to the parties, the Board **FINDS** that Mr. Forshay has satisfied the conditions for admission, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, **IS HEREBY** admitted to practice before the Board pro hac vice in the above-captioned matter provided that he shall:

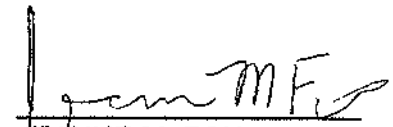
- (1) abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
- (2) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
- (3) notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
- (4) have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.


The Board **FURTHER FINDS** that this petition raises several novel issues of fact and Board policy as set out in the petition and in PSE&G's responsive papers, including the relevance, if any, of the 1956 agreement entered into by NJNG and PSE&G. Accordingly, the Board **HEREBY** retains this petition for hearing, and pursuant to N.J.S.A. 48:2-32, to develop a full record in this matter, **HEREBY APPOINTS** Commissioner Mary-Anna Holden as presiding officer to conduct the requisite hearing, and **AUTHORIZES** her to rule on all motions that arise during the pendency of this proceeding and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.


DATED: 3/20/13


BOARD OF PUBLIC UTILITIES  
BY:

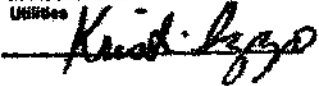
  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
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  


IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR  
APPROVAL OF A MUNICIPAL FRANCHISE IN THE BOROUGH OF SAYREVILLE,  
MIDDLESEX COUNTY, TO SERVE RED OAK POWER, LLC  
BPU DOCKET NO. GE12121084

SERVICE LIST

**NEW JERSEY NATURAL GAS**

Andrew Dembia, Esq.  
Director, Regulatory Affairs  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P.O. Box 1464  
Wall, New Jersey 07719

France Karras  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P.O. Box 1464  
Wall, New Jersey 07719

**BOARD OF PUBLIC UTILITIES**

Jerome May, Director  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

Ricky John  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

Carl Dzierzawiec,  
Division of Energy  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

Michael Ryan, Esq.  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

Edward D. Beslow, Esq.  
Counsel's Office  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350

**DIVISION OF LAW**

Caroline Vachier, DAG  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, New Jersey 07101-5029

Veronica Beke, DAG  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, New Jersey 07101-5029

Babette Tenzer, DAG  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, New Jersey 07101-5029

**PUBLIC SERVICE ELECTRIC AND GAS**

Jodi Moskowitz, Esq.  
PSE&G  
PSEG Services Corporation  
80 Park Plaza, T5G  
Newark, NJ 07102

David Richter, Esq.  
PSE&G  
PSEG Services Corporation  
80 Park Plaza, T5G  
Newark, NJ 07102

**DIVISION OF RATE COUNSEL**

Stephanie A. Brand, Esq., Director  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
Post Office Box 46005  
Newark, New Jersey 07101

Felicia Thomas-Friel, Esq.  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
Post Office Box 46005  
Newark, New Jersey 07101

**TAQA**

Steven S. Goldenberg, Esq.  
Fox Rothchild LLP  
997 Lenox Drive, Bldg. 3  
Lawrenceville, New Jersey 08648

Paul Forshay, Esq.  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004