



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE PETITION OF NEW JERSEY )  
NATURAL GAS COMPANY FOR (1) APPROVAL OF A )  
GAS SERVICE AGREEMENT BETWEEN TAQA GEN- )  
X, LLC AND NEW JERSEY NATURAL GAS COMPANY )  
AND (2) A PROTECTIVE ORDER AND EXEMPTION )  
FROM PUBLIC DISCLOSURE OF CONFIDENTIAL )  
INFORMATION ) DOCKET NO. GO13010059

**Parties of Record:**

**Andrew K. Dembia, Esq.**, on behalf of New Jersey Natural Gas Company  
**Steven S. Goldenberg, Esq.**, Fox Rothschild, LLP., and **Paul Forshay, Esq.**, Sutherland Asbill & Brennan LLP, on behalf of TAQA Gen-X, LLC  
**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 January 25, 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. 48:2-13, 48:2-21, 48:2-23 approve (1) a Gas Service Agreement ("GSA") between NJNG and TAQA GEN-X, LLC ("TAQA") and (2) a Protective Order and exemption from disclosure of confidential information pursuant to N.J.S.A. 47:1A et seq.

Should the GSA be approved, the Company will provide gas distribution service to Red Oak Power, LLC ("Red Oak"), located in the Borough of Sayreville, Middlesex County, New Jersey ("Borough").<sup>1</sup>

<sup>1</sup> Under a separate petition, docketed as GE12121084 the Board issued a Decision and Order on 08/21/13 approving the municipal consent granted by the Borough to NJNG allowing it to provide gas service to the Red Oak facility.

Red Oak currently receives natural gas distribution service from Public Service Electric and Gas Company ("PSE&G"). The initial term of Red Oak's current gas supply contract with an affiliate of PSE&G, Energy Resources & Trade ("PSEG ER&T"), and its current gas transportation agreement with PSE&G, were due to terminate on or about October 1, 2013, however, TAQA and PSE&G ER&T have extended their existing supply contract terms for an additional year, through September 30, 2014. TAQA must decide by September 30, 2013 whether to extend its supply arrangement with PSE&G ER&T through September 30, 2015.

Red Oak currently has a tolling agreement with TAQA<sup>2</sup> whereby Red Oak, the owner of the 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>3</sup> ("PJM") wholesale energy market.

TAQA has a gas transportation service agreement with PSE&G, which includes a discounted rate for the provision of interruptible transportation service by PSE&G. 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 the petition, such improved economics potentially would allow the Red Oak generating 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, in the petition NJNG indicated that the Company has been informed by TAQA representatives that if NJNG cannot provide gas distribution service as well as gas supply service, then TAQA would pursue an interconnection with Transco.

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<sup>2</sup> TAQA is a Delaware limited liability company having an office at 2000 Westchester Ave., Purchase, New York.

<sup>3</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.

TAQA filed a motion to intervene dated February 12, 2013. In support of the motion TAQA says approval of the GSA between TAQA and NJNG would permit NJNG to provide gas supply and related distribution services for the gas volumes supplied by TAQA to Red Oak for generation of electrical power under TAQA's tolling agreement with Red Oak. TAQA believes that approval of the GSA would reduce the cost of purchasing and transporting the natural gas supplies used to produce electric power at the Red Oak generation unit, allow TAQA to bid the power produced at Red Oak into PJM power markets at lower, more competitive prices and increase the frequency with which PJM dispatches power from Red Oak. TAQA says that more frequent dispatches would provide New Jersey ratepayers with economic benefit through lower power costs. 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.

PSE&G filed a motion to intervene dated February 15, 2013 stating that it was not served with a copy of the petition filed with the Board in this matter, that it has a gas distribution franchise which includes the Borough, 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 upon (a) an economically 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 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 to another and (3) whether the franchise sought in the pending proceeding is "necessary and proper for the public convenience and will properly conserve the public interest". N.J.S.A. 48:2-14.

NJNG submitted a letter, dated February 21, 2013, stating that it did not object to the motion to intervene submitted on behalf of TAQA.

On February 27, 2013 NJNG submitted a response in opposition PSE&G's motion for intervention and in opposition to the Board granting PSE&G participation in the matter. NJNG stated that PSE&G is not a party to the GSA, granting of the motion by would improperly cause delay to the parties and to the Board's its review of the GSA, that, if the motion was granted, it would prevent approval of the GSA before the expiration of TAQA's current agreements with PSE&G and PSEG ER&T. Additionally NJNG maintained that PSE&G's potential competition with NJNG for the business of TAQA is not grounds for intervention. NJNG further stated that the proper forum for PSE&G to raise the issues presented in its motion to intervene is in the Company's separate proceeding seeking Board approval of the franchise consent granted to the Company by the Borough.

By letter dated February 28, 2013, TAQA stated that it opposes both PSE&G's motion for intervention and alternatively affording PSE&G participant status on the grounds that PSE&G's gas distribution service is not in issue and will not be affected by the Board's decision in this matter. TAQA asserts that PSE&G has no interest in the GSA between TAQA and NJNG. TAQA further says that the GSA for which the Company seeks approval is not contingent upon exhaustion by TAQA of the Rate Schedule CSG application process nor does TAQA's

transportation rate discount application establish a de facto "right of first refusal" in favor of PSE&G's distribution service to the Red Oak facility or obligate TAQA to accept whatever discount rate PSE&G might offer.

PSE&G submitted a letter dated March 7, 2013 in response to the replies of both TAQA and NJNG in opposition to PSE&G's motion to intervene asserting that it has articulated adequate grounds for the granting of intervention. In support of such position PSE&G says TAQA through Red Oak is a current customer of PSE&G and TAQA is attempting to negotiate a new discount contract with PSE&G; that since TAQA is an existing customer of PSE&G, PSE&G has a significant interest in the filing of NJNG whereby it seeks to facilitate TAQA becoming a customer of NJNG. A determination of whether or not TAQA can bypass PSE&G's gas distribution system and contract with another gas distribution system will have a direct and substantial impact upon PSE&G's remaining gas distribution customers. PSE&G also says that in prior cases the Board has approved motions for intervention in order to obtain a full and complete record and in this proceeding the granting of intervention will not create undue confusion and delay because it has already agreed to the procedural schedule approved by the Board.

NJNG submitted a letter dated March 11, 2013 in response to PSE&G's letter dated March 7, 2013. NJNG says that the instant proceeding does not in any way seek to facilitate TAQA becoming a customer of NJNG and does not impact upon PSE&G's remaining gas distribution customers. It asserts that such matters are properly heard in the separate petition filed by NJNG seeking Board approval of municipal franchise rights granted to NJNG by the Borough. NJNG further says that the grounds presented by PSE&G in support of its motion to intervene are not within the scope of the matter before the Board in this proceeding, consideration of approval of the GSA between NJNG and TAQA.

### **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 intervenor'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).

Because TAQA is a party to the proposed GSA, it has a significant interest in the outcome of the case and will be directly affected by the outcome of this proceeding. Therefore, the Board **HEREBY FINDS** that TAQA has met the standards for intervention in this proceeding. Accordingly, the Board **HEREBY GRANTS** the motion for intervention of 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 Lawyer's 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 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.

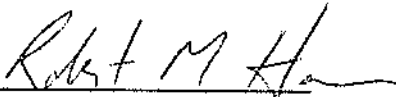
The Board now turns to PSE&G's motion for intervention. Clearly PSE&G is not a party to the proposed GSA between NJNG and TAQA and indeed its main interest is to see that the agreement is not approved by the Board. Also the grounds presented by PSE&G in support of its motion for intervention in this proceeding were considered in the companion proceeding, 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. Unlike prior situations, such as the development of programs, where input from competitors can be useful, the Board is not persuaded that allowing PSE&G to be a party to this proceeding will add measurably and constructively to the conduct of this case which is review of the terms and conditions of the proposed GSA and a determination of whether approval of the agreement is reasonable and in the public interest. Accordingly the Board **HEREBY FINDS** that PSE&G has not met the standards for intervention in this proceeding and denies the motion for intervention of PSE&G.

The Board **FURTHER FINDS** that this petition raises several issues that need to be dealt with expeditiously, given the time frames on the current agreements. 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 commissioner 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: 9/18/13


BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

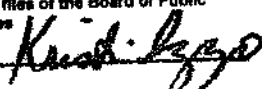
  
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KRISTI IZZO  
SECRETARY

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 (1)  
 APPROVAL OF A GAS SERVICE AGREEMENT BETWEEN TAQA GEN-X, LLC AND NEW  
 JERSEY NATURAL GAS COMPANY AND (2) A PROTECTIVE ORDER AND EXEMPTION  
 FROM PUBLIC DISCLOSURE OF CONFIDENTIAL INFORMATION  
 BPU DOCKET NO. GO13010059

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