Agenda Date: 6/18/12
Agenda Item: 2I

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF NEW JERSEY NATURAL GAS COMPANY'S FOSTERING ENVIRONMENTAL AND ECONOMIC DEVELOPMENT PROGRAM TARIFF SERVICES AND BRANDYWINE ASSOCIATES, L.L.C.	)))))	ORDER APPROVING AMENDED CONTRACT DOCKET NO. GO12030224

APPEARANCES:

Tracey Thayer, Esq., New Jersey Natural Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Order the New Jersey Board of Public Utilities ("Board") considers a request by New Jersey Natural Gas Company ("NJNG" or the "Company") for approval of a fixed price natural gas commodity contract ("Contract") for a term of five years between NJNG and Brandywine Associates, L.L.C. ("Brandywine"), on behalf of Blue Diamond Disposal Company ("Blue Diamond") under the company's Fostering Environmental and Economic Development tariff.

BACKGROUND

By Order dated September 24, 2010, the Board approved a stipulation in Docket No. GO10030225[1] that authorized NJNG to offer several energy efficiency programs. As one of those programs, NJNG was authorized to offer the Fostering Environmental and Economic Development Program ("FEED") for a three year period effective January 1, 2011, including the following: FEED Class 1 – Incentive or discount rates for natural gas service to encourage environmental or economic benefit; FEED Class 2 – Special Developmental Rates designed to recover from the customer any capital investment made by NJNG, along with fees, expenses, costs, other charges and a return on the Company's investment, over the duration or the Contract related to distribution system and main expansions; and, FEED Class 3 – Special Developmental Rates designed to encourage significant, new and/or environmental or economic development projects in NJNG's service territory through investments associated with the installation and/or operation by the Company of non-traditional equipment and facilities. To

[1] In the Matter of the Petition of New Jersey Natural Gas Company for Approval of Regional Greenhouse Gas Initiative Programs and Associated Cost Recovery Mechanisms Pursuant to N.J.S.A. 48:3-98.1.

qualify, an interested commercial or industrial customer must fit into one or more of the following categories: 1) be a new customer intending to use natural gas to provide significant environmental or economic benefits in the NJNG service territory or in a manner that increases system utilization for NJNG; 2) be an existing customer who materially expands the use of natural gas; or 3) be an existing customer with a project that provides significant environmental or economic benefits in the NJNG service territory or significantly increases system utilization for NJNG.

The Company will recover from the customer the capital investment fees, expenses, costs, other charges, along with a return on the investment. According to the Company, these investments will not be included in NJNG's rate base.

Requests related to any potential FEED project are submitted to the Board Staff and Rate Counsel for a 60-day review and comment period. FEED Class I contracts must be submitted to the Board for approval prior to implementation.

On March 13, 2012, NJNG petitioned the Board for approval of a five-year fixed price natural gas commodity contract with Brandywine pursuant to NJNG's FEED tariff. According to NJNG, the Contract is a FEED Class I application and the operations at Blue Diamond meet the criteria set forth within the tariff since Brandywine is an existing natural gas customer significantly expanding its use of natural gas, and is also proceeding with a project that NJNG represents will provide both environmental and economic benefits within its service territory.

While the Contract is with Brandywine, the natural gas will be used at Blue Diamond, a solid waste recycling company located in Mt. Arlington, New Jersey. Blue Diamond is a separate company from Brandywine with some of the same owners, and it rents the Mt. Arlington location from Brandywine. According to the petition, currently, Blue Diamond utilizes a fleet of 100 trucks and 5000 containers to serve over 200,000 residential and commercial customers. According to NJNG, Blue Diamond has made the commitment to transition its trash trucks to compressed natural gas ("CNG"), and has constructed the infrastructure for the first CNG refueling station in Morris County which is complete and became available for service as of December 8, 2011. NJNG states that the agreement between NJNG and Brandywine relates only to charges for the natural gas consumed at the Blue Diamond location, and the service installation was completed in accordance with the current NJNG Board-approved Tariff for main extensions.

If approved, under the terms of the Contract, NJNG will provide Firm Transportation ("FT") delivery service and fixed commodity pricing for natural gas service for five years. The Contract is applicable to volumes of natural gas service used to fuel CNG trash vehicles at Blue Diamond. Blue Diamond anticipates fueling up to 21 vehicles under the Contract and anticipates that approximately 382,000 therms will initially be needed on an annual basis to meet Blue Diamond's start-up CNG transportation needs. According to the petition, Blue Diamond intends to transition to additional CNG vehicles going forward, gradually converting a large percentage of its fleet to operate on CNG over a three- to five-year period. If Blue Diamond requires additional volumes for its expanded fleet or any other reason, Brandywine on behalf of Blue Diamond may request a fixed price from NJNG for the additional volumes. NJNG shall determine the fixed price for natural gas for the additional volumes in the same manner as specified in Article VII of the Contract as of the time of the request.

As stated in the Contract, a fixed price will be paid for natural gas service. The price will be determined at a mutually-agreed upon date following Board approval of the Contract. The price for natural gas shall be the weighted average, based on the monthly volumes, of the monthly market based prices for natural gas at delivery location Texas Eastern M3 ("Tetco M3") for the term of the Contract, along with related costs in securing the fixed price supply through market transactions (hedging costs). The resulting price will be adjusted for all applicable taxes, assessments or surcharges and carried out to the fourth decimal place. Brandywine, on behalf of Blue Diamond, will also be responsible for all generally applicable delivery and meter-related rates and charges for Service Classification FT as set forth in the NJNG Tariff. NJNG will bill Brandywine on a monthly basis for the previous month's natural gas fixed volumes as specified in the Contract. All revenues from the fixed price in the Contract will be credited to NJNG's Basic Gas Supply Service ("BGSS").

NJNG states that imbalances in the volumes of gas purchased for use by Blue Diamond at the fixed price and the volumes of gas used by Blue Diamond will be cashed-out after the end of each month. If the monthly imbalance is negative (more gas was used than purchased at the fixed price), Brandywine, on behalf of Blue Diamond, will be charged for the incremental volume purchased above the volume of gas purchased at the fixed price at the highest weekly index price for Tetco M3, as set forth in any edition of *Natural Gas Week's "Natural Gas Weekly Spot Prices"* issued for the calendar month flow dates. If the monthly imbalance is positive (the volume of gas purchased for Blue Diamond at the fixed price is greater than the amount of gas used by Blue Diamond), Brandywine, on behalf of Blue Diamond, will receive a credit for a positive imbalance less than or equal to 25 percent at the fixed price for natural gas under the contract and applied to the imbalance. Brandywine, on behalf of Blue Diamond, will not receive a credit for any positive imbalance level greater than 25 percent of the fixed priced volumes. All revenues and purchases derived from imbalances will be accounted for in NJNG's BGSS.

According to NJNG, the Contract does not impose any additional costs on NJNG's other customers. The Company will hedge the volume of gas requested for use by Blue Diamond. Under certain circumstances of up to a 25 percent reduction in utilization of the Contract volume, other customers will be affected in that they will be purchasing this imbalance volume at the fixed contract price. NJNG represents that this will be de-minimus. According to NJNG, this is similar to NJNG hedging that volume for BGSS customers, and providing long-term price stability.

NJNG states that, since this is a FEED Class I proposal, there are no infrastructure costs associated with the Contract. The special arrangement is for a FEED incentive associated with the Contract for a fixed volume of natural gas.

Rate Counsel filed comments with the Board on May 14, 2012 stating its concerns about the contract. According to Rate Counsel, as filed, the Contract does not contain the equivalent of Special Provision 3 of Rate Marketers and Brokers Requirements ("MBR") under the Company's FT tariff for transportation customers, which allows NJNG to retain 2% of a transportation customer's deliveries to cover fuel (compressor) use and unaccounted for gas (line loss). Rate Counsel further states that during conferences with Rate Counsel, NJNG, and Staff, NJNG stated that Brandywine has agreed to a 2% retainage clause and the Company intends to submit a revised (or amended) Contract that includes a 2% retainage clause for Board approval. Rate Counsel recommended that the Board condition any approval of the Contract upon the inclusion of contract provisions which subject Brandywine to the 2% retainage.

Rate Counsel's comments also included the concern of the treatment of gas delivery imbalances. However, based on NJNG representations that the volumes of gas for Brandywine are *de minimus* compared to total BGSS purchases and the potential impact of any positive FEED imbalances on BGSS customers would not be measurable, Rate Counsel is not objecting at this time. Rate Counsel understands that the Company will separately account for any imbalances, and these amounts would be subject to review in subsequent BGSS proceedings, among other items. Given these representations, Rate Counsel finds that the cash-out provisions contained in the Contract provide sufficient protection for BGSS customers.

Accordingly, Rate Counsel does not object to the approval of the Contract pursuant to the terms of the FEED tariff, subject to certain conditions. First, Rate Counsel recommends that the Board condition any approval upon the inclusion of contract provisions which subject Brandywine to the 2% retainage, as discussed above. In addition, Rate Counsel's position is conditioned upon the Company's representations regarding the treatment of gas delivery imbalances and the impact on BGSS customers. Rate Counsel reserves the right to review the impact of the Contract on other NJNG ratepayers in the course of its review of the Company's BGSS filings and any other proceedings where supply costs and cost recovery are addressed.

By letter dated June 5, 2012, NJNG stated that the Company agrees with the additional provisions in Rate Counsel's letter and will comply with them. First, the Company states that the FEED contracts pending approval have been modified and contain language about a 2 percent retainage obligation. The Company further states that it will send copies of the fully executed contracts to all parties on the service list once they are available. Second, NJNG agrees that any imbalances related to the cash-out provisions in the Brandywine contract will be accounted for separately, and are subject to review in subsequent proceedings related to NJNG's BGSS, and that it will notify Staff and Rate Counsel prior to agreeing to any request to provide additional gas under the contract. On June 13, 2012, the Company submitted an amended contract with Brandywine that incorporates the 2% retainage provision ("Amended Contract").

DISCUSSION AND FINDING

The Board, having reviewed the proposed Contract between NJNG and Brandywine and comments submitted by Rate Counsel, **HEREBY FINDS** that the proposed Amended Contract is reasonable and consistent with the intent of the FEED tariff by providing a special rate to encourage development within the Company's service territory. Reasonable protections of BGSS customers have been established in the proposed Amended Contract that reflect the operational complexity associated with the balancing of natural gas supplies. Although the balancing provisions in the Amended Contract may be unique to the specifics of the service provided to Brandywine, they were established with the same intent as those balancing provisions for BGSS customers, namely to prevent impacts on other NJNG customers. The Parties retain their rights to review any impacts on other NJNG customers within appropriate rate proceedings.

Therefore, the Board **HEREBY APPROVES** the proposed Amended Contract to be effective as of the date of service of this Order for a five year term with the understanding that the Company's representation regarding the treatment of gas delivery imbalances as discussed in Rate Counsel's May 14, 2012 comments to the Board will be implemented.

The Company's gas costs remain subject to audit. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

DATED: 6/18/12

BOARD OF PUBLIC UTILITIES
BY:

ROBERT M. HANNA
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

In the Matter of New Jersey Natural Gas Company's Fostering Environmental and Economic Development Program Tariff Services and Brandywine Associates, L.L.C.
DOCKET NO. GO12030224

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KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

May 11, 2012

VIA OVERNIGHT MAIL
Hon. Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, NJ 08625-0350

Re: In the Matter of the Petition of New Jersey Natural Gas Company's Fostering Environmental and Economic Development Program Tariff Services and Brandywine Associates, L.L.C.
BPU Docket No. GO12030224

Dear Secretary Izzo:

Please accept for filing (an original and ten copies of) the within comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") concerning the above-referenced petition of New Jersey Natural Gas Company ("NJNG" or "the Company"). Enclosed is one additional copy. Please date stamp the copy as "filed" and return to us in the enclosed self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

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http://www.state.nj.us/publicadvocate/utility E-Mail: njratepayer@rpa.state.nj.us

Background

By way of a petition dated March 12, 2012 ("Petition"), NJNG seeks approval of a fixed price natural gas contract ("Proposed Contract") between the Company and Brandywine Associates, LLC ("Brandywine") pursuant to the Board's Order dated September 24, 2010 (BPU Dkt. No. GO10030225). That Order established the Company's Fostering Environmental and Economic Development ("FEED") tariff which permits special rates to encourage environmental or economic benefits. The Proposed Contract was submitted for approval as a Class I type under NJNG's FEED tariff. Class I type FEED rates are incentive or discount rates for natural gas service to encourage environmental or economic development. Proposals for FEED Class I type rates are subject to a 60-day review period by Rate Counsel and Board Staff, and require Board approval prior to implementation. The within comments reflect Rate Counsel's review of the Company's filing, which encompassed written discovery as well as conferences with the Company and Board Staff.

Brandywine

Blue Diamond Disposal Company ("Blue Diamond") would be the beneficiary of the FEED Contract. Blue Diamond is a solid waste carting company located in Mt. Arlington, New Jersey, utilizing a fleet of 100 trucks and serving over 200,000 residential and commercial customers. Petition, p. 4. Brandywine rents the Mt. Arlington location to Blue Diamond, which has a Compressed Natural Gas ("CNG") vehicle refueling station that became operational on December 8, 2011. Blue Diamond is committed to converting from diesel fuel to CNG and anticipates fueling up to 21 trucks using the annual natural gas volume contained in the Proposed Contract (382,00 therms). Id. By converting to CNG, Blue Diamond anticipates fuel cost savings of 30-50 percent and reductions in on-road greenhouse gas emissions of 20-22 percent for the 21 converted vehicles, as compared to diesel fuel. Petition, p. 6.

<u>Proposed Contract</u>

The Proposed Contract is a 5-year fixed-price gas supply contract with the price to be set as of a date certain, based on the weighted average (monthly volume) of the monthly market based prices for natural gas at delivery location Texas Eastern M3, along with all related hedging cots incurred by NJNG to serve Brandywine. Petition, p. 5. The price will be adjusted for all applicable taxes, assessments and surcharges, including any applicable new taxes, assessments and surcharges. Id.; RCR-RD-2. For gas delivery, Brandywine will take service under NJNG's FT sales tariff. RCR-RD-1. The Company represents that there are no NJNG infrastructure costs associated with the Proposed Contract. Petition, p. 7. Furthermore, if Brandywine determines that additional therms were needed to supply its operations, the Proposed Contract permits NJNG to purchase additional volumes (therms) and may request a fixed price for the additional volumes, to be determined in the same manner as that used to set the price for the initial volume. Petition, p. 4.

The Proposed Contract also addresses gas delivery imbalances. For a negative monthly imbalance (i.e., usage in excess of the monthly volume of gas purchased at the fixed price), Brandywine will be charged the highest weekly index price for that month (for Texas Eastern M3) for such additional usage. See Petition, pp. 5-6; RCR-RD-4; S-NJNG-FEED-11. For a positive monthly imbalance (usage below the monthly volume of gas purchased at the fixed price), Brandywine will receive a credit (equal to the unused volumes times the fixed price) for up to 25% of their scheduled deliveries. Id. Under the Proposed Contract, no credit is received for a positive imbalance greater than 25%, i.e., Brandywine is subject to a take-or-pay provision in the Proposed Contract for 75% of their scheduled deliveries. Id.

Rate Counsel's Concerns

Rate Counsel has two concerns, as discussed below.

1. 2% Retainage

As filed, the Proposed Contract does not contain the equivalent of Special Provision 3 of Rate MBR under the Company's FT tariff for transportation customers, which allows NJNG to retain 2% of a transportation customer's deliveries to cover fuel (compressor) use and unaccounted for gas (line losses). Since the Proposed Contract does not include a retainage clause, NJNG would need to use Basic Gas Supply Service ("BGSS") gas to cover compressor operation and the line losses incurred by the Company to deliver gas to Brandywine. Since the cost of BGSS gas is recovered in the Company's BGSS clause (from BGSS customers), the absence of a retainage clause would necessitate that BGSS customers subsidize gas service for Brandywine. In subsequent conferences, NJNG represented that Brandywine has agreed to a 2% retainage clause that will eliminate this potential subsidy issue. In place of the Proposed Contract, NJNG represented that it intends to submit a revised (or amended) contract that includes a 2% retainage clause for Board approval. Rate Counsel recommends that the Board condition any approval of the Proposed Contract upon the inclusion of contract provisions which subject Brandywine to the 2% retainage.

2. Treatment of Gas Delivery Imbalances

Although Brandywine is not a gas sales customer *per se*, NJNG proposes to classify Brandywine as a FT sales customer instead of a FT transportation customer. As such, Brandywine and its supplier (NJNG) would not be subject to the special provisions of SC-MBR under the NJNG tariff. The cash-out provisions of SC-MBR are designed to penalize gas suppliers for delivering an amount of gas different than the customer's usage. RCR-RD-4. Since SC-MBR does not apply to Brandywine as a FT sales customer, the issue arose as to whether the alternative cash-out provisions contained in the Proposed Contract: (a) offered sufficient incentives to Brandywine to keep its monthly usage and deliveries in balance; and (b) provided sufficient protections for BGSS customers in the case where positive or negative imbalances occur.

During conferences with the Company and Board Staff, NJNG explained that the provision to charge Brandywine the highest weekly Texas Eastern M3 price for the month for negative imbalances would ensure that BGSS customers did not sell Brandywine gas at a price that was less than the price that NJNG paid for gas during that month. In the event of a positive imbalance, BGSS customers would in effect buy up to 25% of Brandywine deliveries at a fixed price that may (or may not) be above the current market price of gas for that month. However, since NJNG hedges (buys in advance) a portion of its BGSS purchases, the Company does not currently buy all BGSS supply at current market prices. Therefore, the requirement that BGSS customers purchase up to 25% of FEED deliveries at a fixed price is no different that other types of hedges that NJNG employs. Finally, NJNG represented that the volumes of gas for the FEED customer at issue here are *de minimus* compared to total BGSS purchases. Therefore, the potential impact of any positive FEED imbalances on BGSS customers would not be measurable.

Furthermore, Rate Counsel understands that the Company will separately account for any imbalances, and these amounts would be subject to review in subsequent BGSS proceedings, among other items. Given the above representations, Rate Counsel finds that the cash-out provisions contained in the Proposed Contract provides sufficient protection for BGSS customers.

Rate Counsel's Position

Rate Counsel does not object to the approval of the Proposed Contract pursuant to the terms of the FEED tariff, subject to certain conditions. First, Rate Counsel recommends that the Board condition any approval of the Proposed Contract upon the inclusion of contract provisions which subject Brandywine to the 2% retainage, as discussed above. In addition, Rate Counsel's position is conditioned upon the Company's representations regarding the treatment of gas delivery imbalances. Furthermore, Rate Counsel reserves its right to review the impact of the Proposed Contract on other NJNG ratepayers in the course of its review of the Company's BGSS filings and any other proceedings where supply costs and cost recovery are addressed.

Thank you for your attention to this matter.

Respectfully submitted,

Stefanie A. Brand, Esq.
Director, Division of Rate Counsel

By: ______________________
Kurt S. Lewandowski, Esq.
Assistant Deputy Rate Counsel

c: President Robert M. Hanna
Commissioner Nicholas Asselta
Commissioner Joseph L. Fiordaliso
Commissioner Jeanne M. Fox
Commissioner Mary-Anna Holden
Service list (via electronic and reg. mail)

In the Matter of New Jersey Natural Gas Company's Fostering Environmental and Economic Development Program Tariff Services and Brandywine Associates, L.L.C.
BPU Dkt. No. GO12030224

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New Jersey
Natural Gas

June 5, 2012

VIA FEDERAL EXPRESS

Ms. Kristi Izzo, Secretary
New Jersey Board of Public Utilities, Suite 801
Two Gateway Center
Newark, NJ 07102

Re: IN THE MATTER OF NEW JERSEY
NATURAL GAS COMPANY'S
FOSTERING ENVIRONMENTAL AND
ECONOMIC DEVELOPMENT PROGRAM
TARIFF SERVICES AND BRANDYWINE
ASSOCIATES, L.L.C.
BPU DOCKET NO. GR12030224
And

IN THE MATTER OF NEW JERSEY
NATURAL GAS COMPANY'S
FOSTERING ENVIRONMENTAL AND
ECONOMIC DEVELOPMENT PROGRAM
TARIFF SERVICES AND WALTER R.
EARLE CORPORATION
BPU DOCKET NO. GR12030223

Dear Secretary Izzo:

New Jersey Natural Gas Company ("NJNG" or the "Company") is submitting this letter in response to the correspondence from the New Jersey Division of Rate Counsel ("Rate Counsel") received on May 11, 2012 in the above captioned cases. As discussed in the letters Rate Counsel provided, NJNG, pursuant to an order of the New Jersey Board of Public Utilities (the "Board" or "BPU") dated September 24, 2010 in Docket No. GO10030225, is authorized to offer certain commercial and industrial customers individualized energy-efficiency and economic development opportunities through the Fostering Environmental and Economic Development (FEED) program. In the two above-captioned matters, NJNG submitted contracts executed through the FEED provisions to the BPU for review by Rate Counsel and BPU Staff prior to BPU approval.

Through this letter, NJNG is providing notice to all parties that the Company agrees with the additional provisions set out in the May 11, 2012 Rate Counsel letter and will comply with them. First, the FEED contracts pending approval have been modified and contain language about a 2 percent retainage obligation (referred to as a "retainage clause" by Rate Counsel). The

Company will send copies of the fully executed contracts to all parties on the attached service list once they are available. Second, NJNG agrees that any imbalances related to the cash-out provisions in the Earle and Brandywine contracts will be accounted for separately and are subject to review in subsequent proceedings related to NJNG's Basic Gas Supply Service (BGSS).

Respectfully submitted,

Tracey Thayer

Tracey Thayer, Esq.
Director, Regulatory Affairs Counsel

Enclosures

C: Service List (electronically only)

IN THE MATTER OF NEW JERSEY NATURAL GAS COMPANY'S FOSTERING ENVIRONMENTAL AND ECONOMIC DEVELOPMENT PROGRAM TARIFF SERVICES AND BRANDYWINE ASSOCIATES, L.L.C.
BPU DOCKET NO. GR12030224
And
IN THE MATTER OF NEW JERSEY NATURAL GAS COMPANY'S FOSTERING ENVIRONMENTAL AND ECONOMIC DEVELOPMENT PROGRAM TARIFF SERVICES AND THE WALTER R. EARLE CORPORATION
BPU DOCKET NO. GR12030223

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BPU DOCKET NO. GR12030224
And
IN THE MATTER OF NEW JERSEY NATURAL GAS COMPANY'S FOSTERING ENVIRONMENTAL AND ECONOMIC DEVELOPMENT PROGRAM TARIFF SERVICES AND THE WALTER R. EARLE CORPORATION
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