Agenda Date: 11/22/13
Agenda Item: 2O

STATE OF NEW JERSEY

Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF TAQA GEN-X, LLC FOR EMERGENT RELIEF	))))	ORDER DOCKET NO. GO13090881

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Martin C. Rothfelder, Esq, Public Service Electric and Gas Company
Steven Goldenberg, Esq., TAQA Gen-X, LLC

BY THE BOARD:

On September 27, 2013, TAQA GEN-X, LLC ("TAQA") filed a petition seeking emergent relief related to an increase in the transportation service rate to be charged to its Sayreville, New Jersey facility by its gas distribution company, Public Service Electric and Gas Company ("PSE&G"). The Sayreville generation facility, known as Red Oak, is a 830 MW combined-cycle, gas-fired power plant located at 832 Red Oak Lane in the Borough of Sayreville, Middlesex County, New Jersey. Red Oak currently has a tolling agreement with TAQA. Red Oak 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 currently supplies natural gas to Red Oak through (i) a gas supply agreement with PSEG Energy Resources and Trade ("ER&T"), and (ii) a gas transportation agreement with PSE&G.

According to the petition, until October 1, 2013, TAQA's gas transportation service agreement with PSE&G provided for service under Rate Schedule TSG-NF at a discounted rate of $0.10 per dth for up to 132,000 dth/day of interruptible transportation service. The primary term of the contract supposedly expired on or about October 1, 2013. TAQA asserts that despite negotiation efforts, PSE&G, ER&T and TAQA have been unable to negotiate mutually agreeable revised pricing terms either for a new gas supply agreement with respect to ER&T and TAQA or a new or continued transportation agreement with respect to PSE&G and TAQA.

TAQA states that the initial date by which a notice of termination of the transportation service agreement could be tendered was September 30, 2012. PSE&G sent a termination letter to TAQA, dated September 27, 2012, with termination to be effective on or after October 1, 2013. Without a negotiated alternative rate agreed to by the parties and approved by the Board, TAQA's rate for transportation service could increase to the full Rate Schedule TGS-NF rate which is presently at $0.67837 per dth. TAQA asks that the Board require PSE&G to continue its current transportation rate until the earliest of: 1) September 30, 2014; 2) commencement of NJNG service to Red Oak; or 3) the effective date of a negotiated resolution between TAQA and PSE&G. Petition at 1.

On August 21, 2013, the Board approved a petition by New Jersey Natural Gas Company ("NJNG") for a limited franchise granted by the Town of Sayreville allowing NJNG to serve the Red Oak facility. As required by N.J.S.A. 48:2-14, the Board found that approval of the franchise was proper under the circumstances as it deemed that service under the grant was necessary and proper for the public convenience and properly conserved the public interests[1].

TAQA has executed a gas service agreement ("GSA") with NJNG to provide gas distribution service as well as supply gas to Red Oak Power. This GSA is currently pending before the Board for review in Docket No. GO13010059.[2]

TAQA's petition for emergent relief contends that the rate increase that PSE&G imposed on it is punitive and will inflict substantial economic harm on both TAQA and New Jersey ratepayers. Petition at 3-4. TAQA asserts that increasing the transportation rate will decrease the plant's dispatch rate in PJM and decrease its need for gas, actually reducing the level of service it takes from PSE&G. Petition at 4-5. TAQA maintains that reduced run time that would result from the increase in its costs will reduce the environmental benefits of running the cleaner and more efficient Red Oak plant, a result that is not in the public interest. Petition at 6-7.

TAQA also contends that the contract termination underlying the rate increase did not comply with the Board's prior notice requirements for such actions as mandated by its decision in In re a Generic Proceeding to Consider Prospective Standard for Gas Distribution Utility Rate Discounts, BPU Docket No. GR10100761, ER10100762, August 18, 2011 ("August 18 Order") at 24. TAQA asserts that PSE&G was required to publically file a notice with the Board ninety days prior to September 30, 2012, to provide sufficient notice of its intention to terminate the contract. TAQA maintains that PSE&G's failure to make this filing denied it a three-month window prior to the contract's termination deadline to attempt to mitigate the impact of that termination. TAQA represents that it noted this obligation during its discussions with PSE&G to facilitate negotiations and afford PSE&G time to cure its noncompliance. Petition at 8-9.

Finally, TAQA asserts that the imposition of the full Rate Schedule TSG-NF rate would constitute unduly discriminatory treatment of TAQA. TAQA contends that these circumstances justify its request for emergent relief.

PSE&G filed a response on October 10, 2013. PSE&G maintains that its discount agreement was lawfully terminated at the end of the primary term of the contract, and that the Board approved tariff rate now applies. PSE&G Response at 1. PSE&G asserts that it lacks a basis to propose a discount to TAQA from the CSG rate since a discount will no longer avoid a bypass of PSE&G's system. Ibid.

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[1] In re the Petition of New Jersey Natural Gas Company for Approval of a Municipal Franchise in the Borough of Sayreville, Middlesex County, State of New Jersey, to Serve Red Oak Power, LLC, BPU Docket No. GE12121084 ("Franchise Proceeding").

[2] In re 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

PSE&G defends its decision to not offer TAQA a discount off of the standard TSG-NF rate through its CSG tariff. PSE&G asserts that TAQA is pursuing a bypass of PSE&G's system and that its previously proffered discount was rejected by TAQA although it admits that discussions as to possible discounting were continuing. PSE&G assets that it has not been able to conclude that it is reasonable or prudent to offer TAQA a discount that would apply only until a bypass line is in place, and any such discount would come at the expense of other PSE&G firm customers. Id. at 4-5.

PSE&G further states that, although it was aware of the requirement to notify the Board of its intent to continue or not to continue the existing discount rate 90 days prior to, in this case, the termination of the primary term of the agreement, PSE&G contends that without TAQA's affirmative consent, PSE&G could not disclose TAQA's information as this would violate N.J.S.A. 48:3-85 and N.J.A.C. 14:4-7.8, and the notice requirement was not intended to apply to customers such as TAQA, only to the Board and Rate Counsel. The Board should find that PSE&G's termination notice was legally sufficient and PSE&G has no basis to provide service to TAQA other than under the TSG-NF tariff rate. Id. at 6-7. PSE&G remains open to receiving additional facts from TAQA or guidance from the Board that would justify proposing a discount to TAQA at this time. Ibid. TAQA's claim that other generators are not paying the full gas transportation tariff rate that applies to it are simply not accurate. Id. at 8.

DISCUSSION AND FINDINGS

When the Board is faced with a petition for emergent relief, it uses the same standard that New Jersey trial courts use when deciding whether to award injunctive relief. See In re Barkers v. PSE&G, BPU Docket NO. GO03080640, 2003 N.J. PUC LEXIS 351. That standard was set out in Crowe v. DeGioia, 90 N.J. 126 (1982). To obtain an order for emergent relief, the petitioner must show (1) that the legal rights on which the claim are well settled; (2) after the case is heard, it is probable that it will prevail on the merits of its claim; (3) if the relief requested is not granted, it will suffer irreparable harm; and (4) balancing the parties' interests and the equities, if the requested relief is denied, it will suffer greater harm than the opponent will suffer if the relief is granted. Id. at 132-135.[3]

In 2011, the Board initiated a generic proceeding that examined the prospective use and regulatory treatment of discounted rate agreements and evergreen clauses that allow those contracts to continue after the initial term ("Discount Agreements"). In the August 18 Order, the Board clarified both the regulatory requirements for future gas utility rate discounts as well as the appropriate contract provisions. The Board specifically stated that it would not require that the utilities submit petitions for Board approval of renewals of Discount Agreements containing evergreen provisions, finding instead that:

> requiring a notice is more appropriate and would not amount to contract impairment because no party's rights under the contract would be changed by such Board action. On a going forward basis, the Board will continue to review all phases of the proposed Discount Agreement, including any proposed evergreen provision, with input from Rate Counsel, as part of the entire deal to determine whether the agreement is in the best interests of the utility and its ratepayers.[4]

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[3] While the Board did not act on the petition without allowing time for PSE&G to respond, it will still analyze the standards for emergent relief as imposing the most stringent requirements for the relief requested.

[4] August 18 Order at 20.

As noted by TAQA, the August 18 Order directed the "GDCs to provide written notice to the Board and Rate Counsel ninety (90) days prior to the earlier of the following for currently existing Discount Agreements: the expiration date of the primary term of any Discount Agreement that contains an evergreen provision ...." Id. at 24. That notice requirement was designed to provide an opportunity, prior to the termination or extension of an existing agreement, for the Board and Rate Counsel to examine the potential consequences that the proposed extension or termination would have on the contracting parties and ratepayers. PSE&G's failure to provide such notice clearly violates the provision of that Order. If PSE&G was unclear as to the possible legal ramifications of providing such a notice, it should have presented the basis of such uncertainty before the timeframe required by the August 18 Order[5]. By not doing so, the Board was denied its ability to exercise its responsibilities as set forth in the August 18 Order. The Board has prevented contract termination where the termination did not comply with the Board's rules. See In re Metro Teleconnect v. Verizon, Docket No. TC02100761, 2003 NJ PUC LEXIS 82 (March 6, 2003), and finds it appropriate to do so here. Accordingly, because the termination did not comply with the directives of the August 18 Order, the Board **FINDS** that the first requirement of the above noted standard has been met.

Additionally, the Board **FINDS** that the second requirement of the standard for emergent relief has also been met. As PSE&G has indicated, TAQA was determined to be eligible for a discounted rate based on a showing of economic by-pass as required under PSE&G's CSG rate schedule if offering the discount would avoid the loss of revenues that would result if a bypass were pursued. While it is presently TAQA's intention to take service from NJNG at a future date, it appears TAQA has provided a prima facie case that a discounted rate from PSE&G would be appropriate as long as it remains a customer on PSE&G's system. Based on the record in the Franchise Proceeding, the facilities used to provide service to TAQA on PSE&G's system have been fully paid for and there would be little if any incremental costs in continuing to serve TAQA. As noted, PSE&G has been charging a discounted rate to TAQA for the past eleven years. Thus we conclude that based on the information currently provided, it is likely that review of the costs to serve TAQA could reasonably support a discounted rate treatment, at least to the level that existed under its just expired contract, leaving PSE&G's firm customers unaffected.

The third requirement requires a showing of irreparable harm to TAQA. In addition to the significant rate increase, from 10 cents per dth to almost 68 cents per dth for transportation under the TSG-NF Rate Schedule (an annual increase in excess of $10 million, under present market conditions), the evidence suggests that the Red Oak plant would be dispatched less by PJM than it has been historically or than it would be dispatched absent the large increase in transportation costs. TAQA estimates that the increase in transportation costs would reduce dispatches from Red Oak by 20 percent. TAQA opines that the reduced dispatch would require the plant to ramp up and down more frequently, which would further increase its operating costs and reduce its reliability and the overall reliability of the PJM grid. The lesser dispatch time would likely lead to greater sulfur and carbon dioxide emissions by less efficient plants. The reduced hours of operation would impact New Jersey more generally through higher energy costs, less reliable service and greater air pollution. Because these environmental impacts cannot be redressed by monetary damages, based on the information available at this time, the Board further **FINDS** that a showing of irreparable harm has been made.

The Board must also balance the parties' interests and the equities. This Order would keep the rate level that it had been at during the course of the primary term of the contract pending any

[5] The Board is not persuaded that PSE&G was precluded from filing the required notice by N.J.S.A. 48:3-85b which applies to individual proprietary information, not corporate information.

further action by the parties. There would be no decrease in revenue to PSE&G or to its ratepayers as a result of maintaining that rate. While an increase in the rate to the standard rate level could raise additional revenues for PSE&G and greater revenue credits for PSE&G's firm customers, the Board is persuaded that any such increase would be at least partially offset by reduced throughput transport volumes and lower off system sales volumes that are largely credited to PSE&G's residential customers. The Board **HEREBY FINDS** that, if the requested relief is denied, TAQA, Red Oak and New Jersey ratepayers and citizens will suffer greater harm than any possible suffering by PSE&G or its ratepayers. The higher costs of electricity, the possible lower level of reliability and the increased air emissions, in our view more than offset any potential harm to PSE&G and its ratepayers, harm which has not been clearly articulated.

The Board recognizes that the circumstances presented are highly unusual, just as other aspects of this matter have proven to be. By this Order the Board does not otherwise alter the requirements set out in the August 18 Order concerning Discount Agreements, and nothing stated in this Order constitutes precedent for any other decisions on Discount Agreements. Thus PSE&G is not precluded from providing notice of its intention to terminate the pre-existing contract with TAQA to the Board and Rate Counsel under the 90 day notice requirement set forth in the August 18 Order, allowing the Board to exercise its responsibilities as envisioned in that Order.

DATED: 11/22/13

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SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities
Kristi Izzo

In the Matter of the Petition of TAQA Gen-X, LLC for Emergent Relief
Docket No. GO13090881

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