



Agenda Date: 11/16/15
Agenda Item: 2D

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 THE PETITION OF SOUNDVIEW)	DECISION AND ORDER
PAPER COMPANY, LLC FOR APPROVAL OF A RATE)	APPROVING GAS SERVICE
SCHEDULE CSG TRANSPORTATION SERVICE)	AGREEMENT
AGREEMENT BETWEEN PUBLIC SERVICE)	
ELECTRIC AND GAS COMPANY AND SOUNDVIEW)	
PAPER COMPANY, LLC)	DOCKET NO. GR14111287
AND)	
IN THE MATTER OF RATE SCHEDULE CSG)	
TRANSPORTATION SERVICE AGREEMENT)	
BETWEEN PUBLIC SERVICE ELECTRIC AND GAS)	
COMPANY AND MARCAL MANUFACTURING, LLC)	
AND THE POTENTIAL DISCOUNT OF SOCIETAL)	
BENEFITS CHARGES)	DOCKET NO. GR15060659

Parties of Record:

Ira G. Megdal, Esq., on behalf of Marcal Manufacturing, LLC
Martin C. Rothfelder, Esq., Public Service Electric and Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

BACKGROUND AND PROCEDURAL HISTORY

On November 10, 2014, Soundview Paper Company, LLC² (“Soundview”) filed a petition, assigned to Docket No. GR14111287, with the New Jersey Board of Public Utilities (“Board”)

¹ Commissioner Upendra J. Chivukula recused himself due to a possible conflict of interest, and did not participate in the deliberations on this matter.

² The Board recognizes that, while Soundview filed the petition, Marcal Manufacturing, LLC (“Marcal”) was the entity that had filed an application for a discounted gas service agreement, and in fact eventually entered into the discount gas service agreement that is the subject of this Order. According to the petition, Soundview’s affiliate Soundview Paper Mills, acquired Marcal in April 2012, and Soundview

pursuant to N.J.S.A. 48:2-21.2(c) requesting that the Board determine that Soundview qualifies for a discounted gas service rate and that the Board approve a Rate Schedule Contract Service Gas ("CSG") Transportation Service Agreement between Public Service Electric and Gas Company ("PSE&G" or "Company") and Soundview that had not been negotiated between the parties. Soundview also sought Board approval of a discount on the Societal Benefits Charge ("SBC"). By letter dated November 25, 2014, PSE&G filed its answer to the petition asserting that no service agreement existed that could be approved by the Board, and that the only issue before the Board was the request for a discount on the SBC charge.

On June 9, 2015, PSE&G filed a letter with the Board, assigned to Docket No. GR15060659, seeking approval of a Rate Schedule CSG Transportation Service Agreement between PSE&G and Marcal ("Service Agreement"). The filing was submitted pursuant to PSE&G's Rate Schedule CSG-Contract Service as set forth in its Tariff for Gas Service on file with and approved by the Board.³ The Service Agreement, attached to the letter as Exhibit "A", set forth the rates, terms and conditions under which PSE&G proposes to provide firm natural gas distribution services to Marcal's facilities at 1 Market Street, Elmwood Park, New Jersey. PSE&G states that the offer included in the Service Agreement is reasonable because the proposed rates exceed marginal costs, and approval of the Service Agreement may prevent the loss of load or result in additional load. PSE&G further requests expedited treatment of the filing.

According to the letter, Marcal also requests to have the SBC discounted during the term of the Service Agreement such that it pays only the portion of the SBC applicable to the programs administered by the Board's Office of Clean Energy ("OCE") or its successor.⁴ PSE&G asserts that it takes no position on Marcal's request for a discount on the SBC charge. Both PSE&G and Marcal request that the Board determine the level of the SBC applicable to this service, and specify the exact amount of the discount in its Order.

The letter further indicates that PSE&G presently provides natural gas transportation services to the facilities owned and operated by Marcal at rates and terms initially set by tariff. In 2007, Marcal received a tax credit on its energy usage by legislative action, which expired in 2013. Marcal claims that the tax credit provided about \$1.5 million in tax relief annually. Marcal has used the expiration of this tax arrangement as the basis for its pursuit of the discount provided in the Service Agreement, and its request for a discounted SBC.

2010 Discount Contract Proceeding

In 2010, the Board conducted and completed a proceeding in which it examined the standards applicable to gas distribution rate discounts and associated terms and conditions.⁵ Subsequently, the Board approved modifications to the Company's tariff, including the establishment of Rate Schedule CSG, to enable PSE&G to provide discount gas service rates in

continues to produce products under the Marcal brand. See petition at paragraphs 2,8 and 9. See also, June 9, 2014 letter attached as Exhibit B to the petition.

³ B.P.U. N.J. No. 15 Gas, http://pseg.com/family/pseandg/tariffs/gas/pdf/gas_tariff.pdf.

⁴ At the time of the filing, the SBC related to the OCE Programs was \$0.0026426 per therm (or \$0.0028276 per therm, inclusive of sales and use tax ("SUT")).

⁵ In re a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions, Docket Nos. GR10100761 and ER10100762 (August 18, 2011) ("Discount Contract Order").

appropriate circumstances to counter “Economically Viable Bypass” threats or for “Other Considerations.”⁶ The CSG tariff, at sheet 112, paragraph 2, requires Board review and approval of agreements that PSE&G enters into under that tariff.⁷

Key Terms of the Contract

The Service Agreement provides for a seven (7) year term, subject to early termination as provided in the CSG Tariff, effective on the first day of the month following the effective date of Board approval of the agreement. The rate to be charged is based on the contract monthly therms using the methodology applicable to Rate Schedule CSG, which includes a service charge and Distribution and Maintenance Charges based on the Non-Firm Transportation Gas Service (“TSG-NF”) distribution per therm charge reduced by \$0.037383 per therm without SUT delivered, except that a minimum annual distribution charge of \$172,645.00 (without SUT) shall be payable to PSE&G.

The Service Agreement is not applicable to the delivery of gas to any future CHP facility acquired by or constructed otherwise at the Elmwood Park facility. Any such facility shall be separately metered and receive service at tariffed rates unless another agreement addressing such rates is in effect. Marcal may make an appropriate application to PSE&G for a Rate Schedule CSG Agreement, or another appropriate mechanism, to be applicable to any such Combined Heat and Power facility, as well as for modifications to the Service Agreement.

The New Jersey Division of Rate Counsel (“Rate Counsel”) and Board Staff propounded discovery upon PSE&G and Soundview/Marcal, and Staff represents that all discovery has been answered.

Rate Counsel Comments

By letter dated August 17, 2015, Rate Counsel submitted comments on the proposed Service Agreement. Rate Counsel states that it does not object to the delivery charges and terms of service set forth in the proposed Service Agreement. However, Rate Counsel objects to the proposed reduction in the SBC charge for Marcal’s production facilities, stating that the proposed discount is based on the “Other Considerations” provision of Rate Schedule CSG, and ~~neither PSE&G nor Marcal claims a credible “Economically Viable Bypass” situation exists.~~ Rate Counsel believes that any reduction in the applicable SBC charge would saddle other ratepayers with an increase in the SBC charge to compensate for the loss of the SBC revenues.

DISCUSSION AND FINDINGS

The Board has carefully reviewed the record in these proceedings, including the filings, the Service Agreement and Rate Counsel’s comments. The Board is satisfied that the Service Agreement will have a financial impact that is beneficial to the State of New Jersey and PSE&G’s ratepayers. This is accomplished by avoiding the loss of load that contributes to the maintenance of the PSE&G’s distribution system since PSE&G has represented that the rates

⁶In re the Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions; Public Service Electric and Gas Company’s Compliance Filing To Implement the Tariff Changes, Docket No. GT11090616 (May 23, 2012).

⁷ B.P.U. N.J. No. 15 Gas, Sheet No. 112, http://pseg.com/family/pseandg/tariffs/gas/pdf/gas_tariff.pdf.

to be charged under the Service Agreement exceed marginal costs and Marcal is required to make a minimum payment each year. Additionally, permitting PSE&G to provide interruptible transportation service at a discount may foster Marcal's potential to increase production at the facility, resulting in increased job creation. The Board is also satisfied that the Service Agreement meets the requirements of PSE&G's previously approved CSG tariff.

Therefore, the Board **HEREBY FINDS** that Marcal qualifies for a discounted gas service rate on the basis of other considerations under Rate Schedule CSG, and the rate to be charged satisfies the requirements of the tariff. Therefore, subject to the conditions stated below, the Board **HEREBY APPROVES** the Service Agreement effective on the first day of the month following the effective date of Board approval as provided in the Service Agreement.

The Board must address Marcal's request for a discount on the SBC as the Service Agreement is contingent on a decision by the Board on that issue. Service Agreement at section 3.1. As stated by the Board in the Discount Contract Order, nothing in N.J.S.A. 48:3-60(a) shows a legislative intent that the SBC be applied to all customers at the same level, and in practice the SBC charge varies between the utilities. Discount Contract Order at 23. In addition, the Board stated that in the appropriate circumstances, it can permit variation from the strict standard rate per therm that has been the norm for assessing the SBC from gas customers. Id.

The Board notes that Marcal has previously received funds from and participated in the New Jersey Clean Energy Program ("NJCEP") which is funded by the SBC. In this case, based on the information submitted in the filing, the Board **FINDS** that it is appropriate to approve a discounted SBC rate. However, Marcal has benefited from the NJCEP, and therefore the Board **FINDS**, that for the term of the Service Agreement, it is appropriate for Marcal to pay the portion of the SBC that is attributable to the NJCEP at the level set each year by the Board and allocated to PSE&G. As agreed to in section 2.2 of the Service Agreement, Marcal shall pay all other current and future CSG tariff charges that may apply at the rates in effect during the term of the agreement.

The Board **HEREBY DISMISSES** the petition filed by Soundview requesting approval of a rate schedule CSG transportation service agreement with PSE&G, assigned Docket No. GR14111287, as the relief requested therein is rendered moot by the Board's approval of the instant Service Agreement and discount of the SBC.

PSE&G's costs remain subject to audit by the Board. This Decision and Order does not preclude the Board from taking any actions deemed to be appropriate as a result of any Board audit.

The effective date of this Order is November 26, 2015.

DATED: 11-16-15

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



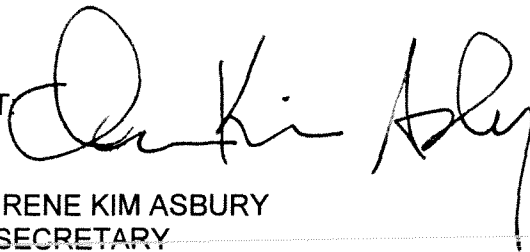
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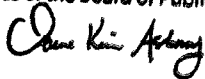


DIANNE SOLOMON
COMMISSIONER

ATTEST 

IRENE KIM ASBURY
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 SOUNDVIEW PAPER COMPANY, LLC FOR
APPROVAL OF A RATE SCHEDULE CSG TRANSPORTATION SERVICE AGREEMENT
BETWEEN PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND SOUNDVIEW PAPER
COMPANY, LLC - DOCKET NO. GR14111287**

AND

**IN THE MATTER OF RATE SCHEDULE CSG TRANSPORTATION SERVICE AGREEMENT
BETWEEN PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND MARCAL
MANUFACTURING, LLC AND THE POTENTIAL DISCOUNT OF SOCIETAL BENEFITS
CHARGES - DOCKET NO. GR15060659**

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Rate Schedule CSG Transportation Service Agreement

This Rate Schedule CSG Transportation Service Agreement (“Agreement”) is by and between Public Service Electric and Gas Company (“PSE&G”), a New Jersey corporation having its principal offices at 80 Park Plaza, Newark, New Jersey 07101 and Marcal Manufacturing, LLC (“Marcal”) of 1 Market Street, Elmwood, NJ 07407 (collectively “the Parties” or individually “Party”).

Witnesseth

WHEREAS Marcal submitted an application to PSE&G seeking interruptible transportation service under PSE&G’s Rate Schedule CSG – Contract Service to Marcal’s facilities located in Elmwood Park, New Jersey (the “Facilities”) under the portion of the tariff entitled “Other Considerations”;

WHEREAS PSE&G has evaluated Marcal’s application for Rate Schedule CSG service and determined that it would be consistent with the terms of its Tariff for Gas Service on file with and approved by the New Jersey Board of Public Utilities (“NJBPU”) – B.P.U.N.J. No. 15 – Gas (hereinafter “Gas Tariff”), including the terms of Rate Schedule CSG, for PSE&G to provide interruptible transportation service to Marcal at the rates, terms and conditions set forth in this Agreement; and

WHEREAS PSE&G wishes to provide to Marcal and Marcal wishes to purchase from PSE&G interruptible transportation service at the rates, terms and conditions set forth in this Agreement, except that Marcal requests to have the Societal Benefits Charge (“SBC”) discounted, and PSE&G has no position on that, such that both parties request that the Board of Public Utilities address this potential charge under this Agreement.

NOW, THEREFORE, in consideration of the above stated premises and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Term

This Agreement shall be effective June 1, 2015 or the first day of the month following the effective date of approval of this Agreement by the NJBPU if the effective date of such approval is later than June 1, 2015 (the "Effective Date") and shall extend for a period of seven (7) years thereafter (each such year being a Contract Year during the term of this Agreement).

2. Transportation

2.1 Transportation Service – From and after the Effective Date specified in Section 1, PSE&G shall provide interruptible natural gas transportation service at the PSE&G meter delivery point with meter numbers 2346831, 1810134 and 2518820 to Marcal. PSE&G shall provide gas volumes as follows: 342 Thousand Cubic Feet ("Mcf") on a maximum hourly basis, 5,934 Mcf on an average daily basis, and 6,764 Mcf on a maximum monthly average daily usage basis. In the event of a conflict between this Agreement and PSE&G's Gas Tariff, this Agreement shall control.

2.2 Rates – The rates charged to Marcal for the Facilities served under this Agreement shall be composed of Delivery Charges as set forth below, plus all other current and future CSG tariff charges that may apply, such as the New Jersey Energy Sales and Use Tax ("SUT"), the SBC or the Green Programs Recovery Charge, except as provided by the NJBPU.

Delivery Charges – As provided in the PSE&G Rate Schedule CSG, the rates for service to all Facilities served under this Agreement will consist of the following charges:

1. Service Charge as set forth in Rate Schedule CSG.
2. Distribution and Maintenance Charges – For distribution and maintenance, the effective Non-Firm Transportation Gas Service (TSG-NF) distribution per therm charge as it may be amended from time-to-time, and its successors, shall be charged, with a reduction of \$0.037383 per therm without SUT delivered (currently \$0.040000/therm with SUT) applied, except that a minimum annual distribution charge payable to PSE&G of \$172,645 without SUT (currently \$184,730 with SUT) shall apply, with the years being the 12-month periods that begin at the effective date of this Agreement and each anniversary thereafter. All other charges applicable to the CSG tariff, such as service charges and any applicable charges, such as the SBC, would apply whether the minimum annual distribution charge is applied or not.

2.3 Billing And Payment – PSE&G will bill Marcal monthly for charges for transportation services in accordance with its Gas Tariff.

2.4 Cogeneration (CHP) Excluded – Marcal may acquire by construction or otherwise a CHP facility at its Elmwood Park facility. This Service Agreement is not applicable to the delivery of gas to any such CHP facility and any such facility shall be separately metered and receive service at tariffed rates unless another

agreement addressing such rates is in effect. Marcal may make an appropriate application to PSE&G for a Rate Schedule CSG Agreement, or other appropriate mechanism, to be applicable to any such CHP facility, as well as for modifications to this Service Agreement.

3. Approvals

3.1 NJBPU Approval – This Agreement is contingent upon approval and a decision on a discount, if any, of the SBC applicable to the service under this Agreement, by the New Jersey Board of Public Utilities.

4. Miscellaneous

4.1 Governing Law – This Agreement shall be governed by the law of the State of New Jersey without resort to principles of conflicts of law.

4.2 Assignment – Neither Party may assign this Agreement without the prior written consent of the non-assigning party, which shall not be unreasonably withheld or delayed. Without relieving itself of its obligations under this Agreement, either Party may transfer its interest to an affiliate with the prior consent of the other Party.

4.3 Notices – Notices under this Agreement shall be in writing and shall be sent as follows:

To Marcal:	TO: PSE&G
President	President
Marcal Manufacturing, LLC	Public Service Electric and Gas Company
1 Market Street	80 Park Plaza
Elmwood Park, NJ 07407	Newark, NJ 07102

4.4 Entire Agreement; Amendments and Waivers – This Agreement, together with all attachments hereto, constitutes the entire agreement between the parties hereto and

shall supersede and take the place of any and all agreements, documents, minutes of meetings, or letters concerning the subject matter hereof made, prior to the Effective Date of this Agreement.

- 4.5 Construction – The headings and captions of the various articles and sections of this Agreement have been inserted solely for purposes of convenience, are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. The term “including” when used herein shall mean “including, without limitation.” Wherever this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.
- 4.6 Third Party Beneficiaries – No individual or entity other than the Parties shall have any rights or claims under this Agreement.
- 4.7 No Waiver – The failure of either Party to seek redress for any breach, or to insist upon the strict performance, of any covenant or condition of this Agreement by the other shall not be, or be deemed to be, a waiver of the breach or failure to perform nor prevent a subsequent act or omission in violation of, or not strictly complying with, the terms hereof from constituting a default hereunder.
- 4.8 Multiple Counterparts – This Agreement may be executed in one or more counterparts, including facsimile pages which shall be deemed originals with the originals to be provided within a reasonable time, all of which shall together constitute one and the same instrument.

4.9 Cumulative Remedies – All rights and remedies of either Party are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

4.10 Representation by Counsel; Mutual Negotiation – Each Party has been represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the Parties, at arm's length with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed under seal on their respective behalf, by their respective duty authorized officers.

Public Service Electric and Gas Company

By:

Name:

Title:

Dated:

Marcal Manufacturing, LLC

By:

Name:

Title:

Dated: