



Agenda Date: 11/30/11
Agenda Item: 2C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PUBLIC)
SERVICE ELECTRIC AND GAS COMPANY (PSE&G))
FOR APPROVAL OF AN AMENDMENT OF LEASE)
AGREEMENT TO OPERATE AND TRANSPORT LIGHT)
OILS THROUGH A WHOLLY-OWNED PSE&G)
TWELVE-INCH STEEL PIPE IN THE CITIES OF)
CARTERET, COUNTY OF MIDDLESEX, AND LINDEN,)
COUNTY OF UNION, TO KINDER MORGAN)
CORPORATION, A DELAWARE CORPORATION, FOR)
THE SUM OF \$325,000.00 PER YEAR)

ORDER

DOCKET NO. GM11030190

David K. Richter, Esq., on behalf of Petitioner, Public Service Electric and Gas Company

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

BY THE BOARD:

By petition filed on April 1, 2011, Public Service Electric and Gas Company ("PSE&G" or "Company") is seeking approval of an amendment ("Amendment") to its lease agreement ("Agreement") with Kinder Morgan Corporation ("Kinder ") to operate and transport light oils through its twelve-inch steel pipe ("Pipe") and associated Rights-of-Way ("ROW") in the Cities of Carteret, County of Middlesex, and Linden, County of Union. The rental price under the Amendment is \$325,000.00 annually for a period of three (3) years with the term ending on December 31, 2013.

The Pipe was acquired by PSE&G in 1975, and was operated along a ROW procured by easement to transport naphtha, a petroleum product. The Pipe was retired by PSE&G in 1989 and subsequently leased to Kinder, as successor to GATX Terminals Corporation, under the Agreement approved by the Board Order dated July 19, 1994 (Docket No. GM93120531). The rental price under the Agreement was \$279,000.00, plus an additional \$.007 per barrel for from twelve (12) to twenty (20) million barrels in a given year and \$.005 per barrel for every barrel over twenty (20) million barrels.

In its petition, the Company stated that the main terms of the Amendment include: (1) a renegotiated rental price that is based on current appraised value; (2) increased

indemnifications to PSE&G and (3) the elimination of any responsibility on the part of the Company regarding the annual inspection and maintenance of the Pipe. Included with the petition was the July 1, 2010 appraisal of Nationwide Consulting Company, Inc., including both the market value and annual rental amounts for segments of the Pipe and ROW.

The Company asserts that because it is merely amending the Agreement, it did not generally advertise the Pipe and ROW for lease, and requests a waiver of the advertising requirements of N.J.A.C. 14:1-5.6(i)7 since the Pipe is no longer used and useful for utility purposes, the rental price exceeds the fair market value, there is no relationship between the Company and Kinder Morgan, there are only limited users for the Pipe, and advertising and bidding would likely not result in a higher rental price. The Company has further indicated that the revenues received from Morgan will be deposited into PSE&G's Gas Utility Company Code DC10 G/L Account No. 4950020 G -Other Operating Revenue, and will be treated above the line for ratemaking purposes.

In its comments submitted to the Board dated June 10, 2011, the Division of Rate Counsel stated that it does not object to waiving the advertising requirement for the lease, and does not object to the Amendment as the rental appears to reflect the fair market value of the property, and the Amendment provides PSE&G with an added measure of liability indemnification while relieving PSE&G of certain inspection and maintenance responsibilities. Rate Counsel requests that any order include certain inspection and reporting requirements similar to those included in the Order approving the Agreement.

Discussion and Findings

The Board notes that this matter presents unique circumstances, including the restrictive attributes of the property. The Pipe has been leased since 1994, and has limited value to anyone other than Kinder. As all other requirements of N.J.A.C. 14:1-5.6 have been satisfied, the Board **HEREBY FINDS** that a waiver of the advertising requirement will not adversely affect the public interest.

The Board further notes that the Pipe is no longer used and useful. However, since PSE&G's natural gas customers paid for the Pipe, they should benefit from revenues derived from the lease. The annual rental amount under the Amendment is reasonable in that, it reflects the fair market rental value recommended in the appraisal submitted with the petition. Moreover, according to the Company, the revenues associated with the lease will continue to be treated above the line for ratemaking purposes. Revenues resulting from this Amendment should be reviewed in the Company's next base rate case to ensure that an appropriate level of revenues is reflected above the line for the benefit of PSE&G's natural gas ratepayers.

The Board further notes that the Amendment also has sufficient language to protect PSE&G from claims, suits, judgments, damages, losses including environmental liabilities or other liability of any nature arising out of or related to the use and operation of the pipeline by the Lessee, its employees, agents or contractors.

After review of the entire record in this matter, the Board **HEREBY FINDS** that the proposed Amendment: (1) will not adversely affect the public interest; (2) will not affect PSE&G's ability to provide safe, adequate, and reliable utility service to its customers; and (3) is in compliance with all applicable statutes and regulations.

Accordingly, the Board HEREBY GRANTS the request for a waiver of the advertisement requirements and APPROVES the Amendment to the Agreement. Further, the Board HEREBY DIRECTS that the level of rental revenues shall be reviewed in the Company's next base rate proceeding to ensure that an appropriate level of revenues continues to be reflected above the line for the benefit of PSE&G's natural gas customers. Additionally, the Board HEREBY DIRECTS PSE&G to submit to the Board's Bureau of Pipeline Safety:


1. A written certification regarding inspections and maintenance performed on the Pipe within ten (10) days of same being performed;
2. A copy of Kinder Morgan Pipeline Integrity Plan;
3. Reports of all tests, assessments, modifications, improvements, and relocations.

Additionally, PSE&G is HEREBY DIRECTED to inform the Board immediately upon learning of any spill or leakage of pipeline product, any hazardous situation, or any situation that may compromise the safe operation of the Pipe.

The approval of this Amendment is the only modification of the Board's 1996 Order. All other terms and conditions set out in the prior Order shall remain unchanged and in full force and effect unless subsequently modified by the Board.

DATED: 11/30/11

BOARD OF PUBLIC UTILITIES
BY:



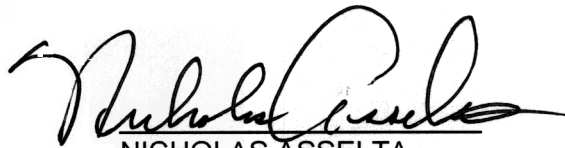
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



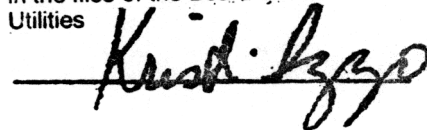
NICHOLAS ASSELTA
COMMISSIONER

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



KRISTI IZZO

I/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF AN AMENDMENT OF LEASE AGREEMENT TO OPERATE AND TRANSPORT LIGHT OILS THROUGH A WHOLLY-OWNED PSE&G TWELVE-INCH STEEL PIPE IN THE CITIES OF CARTERET AND LINDEN, COUNTY OF UNION, TO KINDER MORGAN CORPORATION, A DELAWARE CORPORATION, FOR THE SUM OF \$325,000.00 PER YEAR

DOCKET NO. GM11030190

SERVICE LIST

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P.O. Box 46005
Newark, New Jersey 07101

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

RECEIVED
MAIL ROOM
11 MAR 31 AM 10:26
BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

Petition of Public Service)
Electric and Gas Company)
(PSE&G) For Approval of its)
Amendment of Lease Agreement)
To Operate and Transport Light Oils)
Through a Wholly-Owned PSE&G)
Twelve-Inch Steel Pipeline in the Cities)
of Carteret and Linden, County of Union,)
to Kinder Morgan Corporation,)
a Delaware Corporation For the)
Sum of \$325,000.00 per year) Docket No.

To the Honorable
Board of Public Utilities:

Public Service Electric and Gas Company, a New Jersey corporation having its principal and executive offices at 80 Park Plaza, Newark, New Jersey, 07102, is a public utility subject to the jurisdiction of your Honorable Board and files this petition pursuant to N.J.A.C. 14:1-5 for approval of an Amendment of Lease Agreement to operate and transport light oils through a wholly-owned PSE&G twelve-inch steel pipeline (the "Pipeline") and associated right-of-way in the Township of Carteret in the County of Middlesex and the City of Linden in the County of Union (the "Leased Premises") to Kinder Morgan Corporation and:

1. The Pipeline was acquired by PSE&G in 1975 and was used to transport naphtha, a petroleum product. The right-of-way is occupied by PSE&G via easement. The Pipeline was retired by PSE&G in 1989 and the Leased Premises have been leased to Kinder Morgan Corporation, as successor-in-interest to GATX Terminals Corporation pursuant to a Lease approved by the Board on July 19, 1994 under Docket No. GM93120531 (the "Original Lease") which is attached to the Affidavit of Roger J. Trudeau as Exhibit A.

2. Pursuant to the Original Lease, the annual rental amount was \$279,000.00.

3. The key terms of the Amended Lease are as follows:

a. PSE&G renegotiated the rental amount to better align with current rental amounts. Under the terms of the Amended Lease Agreement, Kinder

Morgan will pay PSE&G an annual rental amount of \$325,000.00. Attached to the Trudeau Affidavit as Exhibit B is a true and correct copy of the appraisal prepared by Nationwide Consulting Company, Inc., showing the fair market value for the Leased Premises. The rental amount in the Amended Lease Agreement exceeds the fair market rental value as set forth in the appraisal.

- b. PSE&G renegotiated the Lease to require Kinder Morgan to increase the amount of indemnifications to PSE&G, including an additional environmental indemnification as shown in Paragraph 6 of the Amended Lease. Attached to the Trudeau Affidavit as Exhibit C is a true and correct copy of the proposed Amended Lease Agreement.
 - c. The Amended Lease term is for three (3) years ending on December 31, 2013.
 - d. Pursuant to the terms of the Amended Lease PSE&G is no longer responsible for the annual inspection and maintenance of the Pipeline.
4. Attached to the Trudeau Affidavit as Exhibit D is a copy of the approval of the PSE&G's Vice President – Gas Operations.
 5. The Amended Lease Agreement will not compromise PSE&G's ability to provide safe, adequate and reliable service as it has not been used and useful to PSE&G since 1989 and has been leased to Kinder Morgan since 1994.
 6. Petitioner respectfully requests the Board to grant a waiver of the requirement to advertise this property pursuant to N.J.A.C. 14:1-5.6 (i)7 due to the following:
 - a. the waiver shall not adversely affect the public interest because PSE&G is seeking to amend a currently existing lease;
 - b. the subject property is no longer used and useful for utility purposes;
 - c. ~~there is no prospective use of the Leased Premises for utility purposes other than the prospective tenant because the Leased Premises are currently being used by the prospective tenant;~~
 - d. the rental price exceeds the fair market value;
 - e. there is no relationship between Kinder Morgan and PSE&G other than landlord and tenant;

- f. the Leased Premises are unique and there are limited uses for the Leased Premises given the use of the Leased Premises for the past twenty-two years;
- g. advertising and bidding will likely not result in a higher rental price;
- h. there are only a limited number of users who could likely use the Leased Premises for its intended purpose;

7 Correspondence or communications with respect to the petition may be addressed to:

David K. Richter
Assistant General Regulatory Counsel
Public Service Electric and Gas Company
80 Park Plaza, T5C
Newark, New Jersey 07102
973-430-6451
david.richter@pseg.com

Respectfully submitted,

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: 

David K. Richter
Assistant General Regulatory Counsel

Dated: March 28, 2011
Newark, New Jersey

KJ

**FIRST AMENDMENT TO PIPELINE LEASE AGREEMENT
BETWEEN
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
AND
KINDER MORGAN LIQUIDS TERMINALS, LLC**

FIRST AMENDMENT TO PIPELINE LEASE AGREEMENT dated this 28 day of December 2010 (hereinafter called "First Amendment" between **PUBLIC SERVICE ELECTRIC AND GAS COMPANY**, a New Jersey public utility corporation having its principal office at 80 Park Plaza, Newark, New Jersey 07101 ("PSE&G") and **KINDER MORGAN LIQUIDS TERMINALS**, a Delaware limited liability company having its principal office at 78 Lafayette Street, Carteret, NJ 07008 ("Kinder").

WITNESSETH

WHEREAS, PSE&G wholly owns a 42-inch diameter pipeline and related equipment (hereinafter "Pipeline") for the transportation of bulk liquid hydrocarbon products between the Kinder Terminal in Carteret, New Jersey and the existing PSE&G facilities in Linden, New Jersey which pipeline is not presently utilized by PSE&G for its utility operations;

WHEREAS, by agreement dated August 23, 1993 (hereinafter called "Lease Agreement") PSE&G leased a portion of the Pipeline to GATX Terminals Corporation for the transportation of bulk liquid hydrocarbon products between the Kinder Terminal in Carteret, New Jersey and the Sea Pipeline Company located in Linden, New Jersey;

WHEREAS, Kinder is the successor in interest in the Lease Agreement to GATX Terminals Corporation;

WHEREAS, the Lease Agreement will terminate on December 28, 2010; and

WHEREAS, Kinder and PSE&G desire to extend the Lease Agreement for three (3) additional years and modify certain portions of the Lease Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants herein contained, PSE&G and Kinder hereby agree as follows:

1. **Term:** The term of the Lease Agreement shall be extended to December 31, 2013 subject to receipt of the governmental approvals as set forth in Paragraph 7 and subject to termination as provided for in paragraph 7 herein.
2. **Annual Rental Amount:** Kinder shall pay PSE&G an annual rental to include throughput in the amount of Three Hundred Twenty Five Thousand Dollars and Zero Cents (\$325,000.00) (the "Annual Rental"), payable in monthly installments of Twenty

Seven Thousand Eighty Three Dollars and Thirty Three Cents (\$27,083.33), on the 1st of each month (the "Monthly Rent") beginning on January 1, 2011.

3. **Inspection and Maintenance:** Kinder shall take full responsibility for operating the Pipeline in a safe manner, including the adherence to a pipeline integrity plan for this particular pipeline, conformance with all requirements of jurisdictions regarding same, including, but not limited to actions required to protect the pipeline from interference or threats from third parties ("Markouts"). Kinder shall maintain an active and effective spill response plan, as required by governing authorities, especially in connection with pipelines crossing through wetlands. Kinder shall upon execution provide PSE&G with a copy of their Pipeline Integrity Plan, and copies of all tests, assessments and modifications to the pipeline made for purposes of maintaining the integrity of the pipeline for continued use as a transporter of hydrocarbon or other products, liquid or gaseous, under pressure. PSE&G requires copies of any and all regulatory inspections or audits of the pipeline integrity. As a courtesy, PSE&G will continue to take annual cathodic protection tests at test stations on the Pipeline and maintain the rectifier, however these test results will be given to Kinder for use in assessing the overall integrity of the line and for filing with their Pipeline Integrity Plan. Kinder will take all responsibility for proper markout of the line for excavators and observation of excavations by third parties that are adjacent to the Pipeline. In consideration of the increased responsibilities mentioned above, Kinder shall no longer pay PSE&G an annual inspection and maintenance fee.

4. **Compliance with Federal Regulations:** All costs of any future modifications to maintain the Pipeline in compliance with government regulations will be borne by Kinder. If required to make modifications in order to be in compliance with governmental regulations, Kinder must notify PSE&G in writing of its plans for the modifications or improvements or may elect to terminate the Lease Agreement within thirty (30) days following written notice of refusal to make the mandatory modifications. Kinder is solely responsible for the preparation and submission of the "Response Plans for Onshore Oil Pipelines" as required in the DOT 49 CFR Part 194 regulations.

5. **Improvements and Relocations:** Kinder will at their sole cost and expense, be allowed to make modifications to the Pipeline as needed for their operations, including relocating the Pipeline for operational or maintenance purposes or due to third party encroachment. All new sections of the Pipeline shall be of an acceptable design and standard of construction, including pressure testing, that is consistent or better with the rest of the existing Pipeline and that conforms to all applicable codes, standards and environmental practices standard to the industry. PSE&G shall have no obligation to relocate the Pipeline for any reason.

6. **Liability Indemnification:** Kinder agrees to indemnify, hold harmless and defend PSE&G, its employees and officers, from and against any and all claims, suits, judgments, damages, losses, assessments, environmental liabilities of any kind, including costs of remediation, fines and assessments, added taxes or other liability of any nature (all hereinafter called "Liabilities") arising out of or related to the use and operation of the Pipeline by Kinder, its employees, agents or contractors. This indemnification does not apply to any claims, losses, suits or damages caused by the sole negligence or willful misconduct of PSE&G, its employees, contractors or subcontractors. Anything in this paragraph to the contrary notwithstanding, Kinder shall be fully and solely responsible for any and all bulk liquid hydrocarbon product transported through the Pipeline during the term of the Lease Agreement or this First Amendment. As provided in paragraph 12., Leak Response Or Damage, of the Lease Agreement Kinder shall be solely responsible for any and all cleanup of pipeline product that may be spilled or that may leak from the pipeline, regardless of cause, and shall be responsible for any and all Liabilities, including environmental, resulting from such spill or leakage and shall indemnify, hold harmless and defend PSE&G, its employees and officers, from and against any and all claims, suits, judgments, damages, losses, assessments, environmental liabilities of any kind, costs of environmental remediation, fines and assessments, added taxes or other liability of any nature caused by or resulting from the leakage or spill of pipeline product. Kinder shall be responsible for all costs, scheduling, design and workmanship necessary for repair of damage to the pipeline to restore the line to full useful and code compliant use. The provisions of this Section 6 shall survive the expiration or earlier termination of this Lease Agreement.

7. **Approval and Termination:**

- a. This First Amendment shall be submitted by PSE&G to the New Jersey Board of Public Utilities (hereinafter "NJBPU") for approval pursuant to New Jersey law. If PSE&G is unable to obtain approval from the NJBPU, PSE&G shall immediately terminate the Lease Agreement by written notice to Kinder.
- b. This First Amendment and the Lease Agreement may be terminated for cause by either party, if, after providing the other party with written notice of default (the "Notice of Default"), the defaulting party does not correct such default within sixty (60) days of receipt of the Notice of Default, or such reasonable extension of time as necessary provided the defaulting party is in good faith proceeding to cure the default.
- c. At the end of the term of this First Amendment or upon earlier termination as provided in this section, as applicable, Kinder shall surrender the Pipeline to PSE&G in as good a state and condition as it was at the start of the lease term, reasonable use and wear excepted. Kinder shall purge and clean the Pipeline of Kinder hydrocarbon product and fill same with nitrogen prior to surrendering the Pipeline to PSE&G.

- d. Should the termination of this First Amendment or the Lease Agreement trigger the provisions of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. or any subsequent statute or regulation, Kinder will be fully responsible to comply with and satisfy any condition of the New Jersey Department of Environmental Protection. PSE&G shall have no further liability for any environmental conditions associated with the Pipeline.

Kinder can terminate this Lease agreement for any reason by written notice to PSE&G six (6) months prior to the date of termination.

8. **Ingress and Egress:** PSE&G hereby agrees that it will not impede the ability of representatives of Kinder to have the unlimited right of ingress and egress at any and all times to the Pipeline. PSE&G hereby grants Kinder a non-revocable Right of Entry to the Pipeline for a term simultaneous with this First Amendment. If this First Amendment or the Lease Agreement is terminated for any reason, Kinder's Right of Entry is also terminated.
9. **Insurance:** Kinder agrees to provide the insurance coverage set forth in Exhibit A, which is incorporated into and made a part of the Lease Agreement and this First Amendment.
10. **Assignment:** The Lease Agreement and this First Amendment shall be binding upon, and inure to the benefit of, the successors and assigns of the respective parties. Notwithstanding the foregoing, neither the Lease Agreement nor this First Amendment shall be assigned, whether by operation of law or otherwise, by Kinder without the prior written consent of PSE&G except to a person controlling, controlled by or under common control with Kinder. Any assignment by Kinder shall not relieve Kinder of its obligations hereunder.
11. **Notices:** Any notice or demand in respect of the Lease Agreement or this First Amendment shall be made in writing and shall be deemed to have been validly delivered if delivered personally with signed receipt or sent by overnight express, certified or registered mail, postage prepaid, to the addressee at the address shown below, or at such other address as the addressee may have furnished in writing to the other party.

PSE&G

Richard A. Franklin
Manager – Corporate Properties
80 Park Plaza
Newark, NJ 07101

Kinder

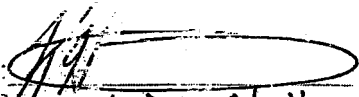
Sales Manager
Kinder Morgan Carteret
78 Lafayette Street
Carteret, New Jersey 07008


12. **Scope of Agreement:** The Lease Agreement and this First Amendment covers only the use of a portion of the aforesaid PSE&G 12-inch diameter pipeline to connect the Kinder Terminal in Carteret, New Jersey with the Sun Oil Pipeline located in Linden, New Jersey.
13. **Remainder of Lease Agreement Remains in Full Force and Affect:** Except as specifically amended by the provisions of this First Amendment, all other provisions, terms and conditions of the Lease Agreement shall remain fully in force without modification except as modified herein.
14. **Entire Agreement:** The Lease Agreement and this First Amendment constitute the entire understanding between PSE&G and Kinder with respect to the subject matter hereof and there are no understandings, representations or warranties of any kind except as expressly set forth herein.

IN WITNESS WHEREOF, PSE&G and Kinder have caused this First Amendment to be duly executed as of the day and year first above written.

WITNESS

KINDER MORGAN LIQUIDS TERMINALS, LLC

By: 
 Name: Kevin H. Golankiewicz
 Title: General Manager
 - Northeast Region


By: 
 Name: David Vattius
 Title: Vice President

WITNESS

PUBLIC SERVICE ELECTRIC AND GAS
 COMPANY

By: PSEG Services Corporation, Its Agent

By: _____
 Name:
 Title:

By: 
 Name: Richard A. Franklin
 Title: Manager - Corporate Properties