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VIA E-MAIL

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

**Re: In the Matter of a Generic Stakeholder Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions
BPU Docket Nos. GR10100761 and ER10100762**

Dear Secretary Izzo:

This firm represents South Jersey Gas Company ("South Jersey") in connection with the referenced matter. Please accept this letter as South Jersey's initial written submission as provided for in the public notice, published in newspapers of general circulation within this State.

South Jersey appreciates the opportunity to provide these comments, and believes that the Board can and will resolve the issues in this matter in such a way as to continue to promote electrical generation and the economic vitality of New Jersey.

This proceeding is designed to help natural gas utilities provide discounted natural gas service to, among others, electric generation customers in this State. The purpose is to promote the growth of New Jersey-based generation.

I. SOUTH JERSEY IS UNIQUE AMONG NATURAL GAS UTILITIES IN THIS STATE, IN THAT IN CONJUNCTION WITH THIS BOARD, IT LONG AGO DEVELOPED A SET OF STANDARDS TO DETERMINE WHEN A GENERATOR SHOULD BE ENTITLED TO A DISCOUNTED CONTRACT RATE.

Approximately 20 years ago, South Jersey implemented certain provisions within its then Rate Schedule Large Volume Cogeneration (“LVCS”) providing that cogenerators within its service territory could receive contract rates which were less than the standard rates contained within Rate Schedule LVCS. South Jersey originally proposed this rate schedule provision to the Board out of recognition that payment of tariff gas rates could be uneconomical for some cogenerators; the result being that an otherwise deserving cogeneration project might not be built. Therefore, South Jersey proposed and the Board approved tariff provisions which contained conditions under which cogenerators could be granted discounts on tariff rates.

As years passed, South Jersey and this Board realized that it made sense and was good public policy to extend these provisions to other generators. South Jersey’s Rate Schedule LVCS was replaced with its current Rate Schedule Electric Generation Service – Large Volume (“EGS-LV”). Rate Schedule EGS-LV is not only applicable to cogenerators, but to all commercial and industrial electric generation facilities with a daily demand of 200 mcf or more. Rate Schedule EGS-LV was implemented in 2004, and remains in effect today. Special Provision (e) of Rate Schedule EGS-LV provides as follows:

The Company may, at its sole discretion, offer a D-1 Demand Charge and a C-3 Commodity Charge on a negotiated basis. The D-1 charge, taken in combination with the Limited Firm C-3 charge, if applicable, may not be lower than an amount sufficient to generate a reasonable return on capital investments made by the Company and recovery of marginal and embedded costs, including

depreciation, to provide service under this Rate Schedule EGS-LV. If such an offer is made it shall be based upon cost of service and value of service considerations, including but not limited to such factors as: (1) proximity of customer to the Company's transmission lines; (2) whether the customer will utilize the Company's interstate pipeline capacity; (3) whether the customer will provide its own gas supply; and (4) other pertinent factors. Such negotiated percentages and resultant rates shall be set forth in the Standard Gas Service Agreement (EGS-LV) and filed with the Board within thirty (30) days of execution, for approval. Service Agreements providing that the customer will pay the Benchmark Rates shown in the Monthly Rate section of this Rate Schedule (EGS-LV) shall not require filing with the Board. The Benchmark Rates contained in service agreements shall be subject to modification as provided by Special Provision (m) of this Rate Schedule EGS-LV. All agreements submitted to the Board shall contain an explanation regarding the term of the agreement. The Company, the customer, the Board and its Staff shall treat any Standard Gas Service Agreement (EGS-LV) filed or to be filed with the Board, any petition related thereto, supporting documentation or any discovery related thereto as proprietary and trade secrets of the Company. As such, the contents of such material shall not be disclosed to any party, unless that party executes a confidentiality agreement acceptable to the Company.

Under this provision, over the years, a number of generators requested discounted rates. In all such cases, South Jersey negotiated rates with these generators and submitted the contracts to the Board for approval. In no case did this Board deny approval of such a contract.

It should be noted that by tariff, none of these contracts may be lower than an amount sufficient to generate a reasonable return on capital investments made by South Jersey and the recovery of marginal and embedded costs, including depreciation. As a result, while the negotiated rates have been lower than tariff rates, they all provide a contribution towards fixed costs. If these generators did not exist, their contribution towards fixed costs would not take place, and other customers, including residential customers, would lose the benefit of these contributions. Customer rates would be higher but for the advent of the negotiated rate contracts. In addition, the contracts have enabled the development in South Jersey's service territory of much-needed generation for this State. These agreements have passed scrutiny of this Board, and thus, have presented a win-win situation for New Jersey.

As will be noted later in these comments, South Jersey believes that its Rate Schedule EGS-LV is working fine, and, since it is not broken, need not be fixed.

South Jersey commends the Board for originally authorizing the provisions of its Rate Schedule LVCS; subsequently authorizing the provisions of its Rate Schedule EGS-LV; and properly reviewing and authorizing South Jersey's discounted rate agreements with generators in its service area.

II. SOUTH JERSEY PROPOSES THAT EACH GAS UTILITY IN THIS STATE BE DIRECTED TO MAKE INDIVIDUAL, UTILITY-TAILORED FILINGS TO IMPLEMENT DISCOUNT CONTRACT TARIFFS APPROPRIATE TO THEIR SERVICE AREAS.

As previously noted, South Jersey is unique in that its existing tariff specifically provides for discounted contract rates for generators. South Jersey believes that with impact to generators, no tariff modifications are necessary. However, South Jersey believes that similar provisions should be extended to its Rate Schedule Large Volume Service ("LVS"), applicable to large industrial customers. In its filing, South Jersey would propose modifications to Rate Schedule LVS similar in concept to the standards contained in its Rate Schedule EGS-LV. However, the proposed modifications would be broader to include South Jersey's ability to discount tariff rates for those large volume industrial customers (a) proposing to by-pass South Jersey's system; and (b) who would provide economic development within South Jersey's service area if granted a discounted natural gas service contract.

Thus, South Jersey is unique, in that in this proceeding it would not propose a tariff for generators, but would propose tariff modifications for large volume industrial customers.

South Jersey believes that the prevention of by-pass by large volume customers is important to customers within its service area. It will help preserve contributions toward the

costs of providing service within its service area, the result of which, will be beneficial to all of South Jersey's customers.

Likewise, South Jersey believes that natural gas utilities can play a significant role in promoting economic development in the State. By way of example, a discounted natural gas rate, which would help attract a large industrial customer to the economically depressed city of Bridgeton, would benefit the entire state of New Jersey, *i.e.*, it would help promote jobs in difficult economic times and in depressed areas.

Other companies may believe that different standards are appropriate in their service areas. Some may even propose more detailed standards or no standards at all. However, South Jersey does not believe this is necessary, as its existing standards allow a certain amount of discretion, which discretion must be reviewed and approved by this Board. Other than South Jersey, all companies will have to develop, for the first time, provisions appropriate for the discounting of generation contracts. Since all of these companies are unique, and their service areas are unique, South Jersey believes individual proceedings are appropriate.

The balance of these comments relate to the issues which the Board has asked South Jersey to address. They will be addressed within the context of South Jersey's proposal.

A. There Is No Legal Impediment To Discounting Natural Gas Rates For Appropriate Reasons.

The starting point of any rate analysis is *N.J.S.A.* 48:2-21 which allows this Board to establish rates which are "just and reasonable". South Jersey knows of no legal argument which would preclude a determination that rates discounted, due to a customer's ability to by-pass a distribution system; or for other good and valid policy reasons, would not be just and reasonable. This Board has itself long determined that discounts to avoid by-pass are wholly appropriate. In fact, this is one of the elements of South Jersey's Board approved Rate Schedule EGS-LV.

Moreover, it makes sense. Avoiding by-pass, assuming other factors such as the recovery of fixed costs are recognized, helps avoid detriment to the rates of all other customers. Moreover, this Board has long ago adopted discounted rates to meet other public policy considerations. For example, this Board adopted economic development rates for South Jersey found in its Economic Development Rider, Rider "H" to the existing South Jersey tariff.¹ These economic development rates, promoted good, sound public policy.

South Jersey knows of no legal precedent or doctrine that would prevent such discounting.

B. The Establishment Of Discounted Gas Distribution Rates Through Contracts Is Well Established.

For the reasons set forth above, the precedent of this Board establishes that discounted rates through special contracts is appropriate.

Frequently, these contracts contain an initial term of five, ten, fifteen or more years. They also contain provisions whereby they are continued thereafter from year-to-year unless terminated by either party. These provisions sometimes referred to as "evergreen" provisions, are exceedingly common within the commercial context, and there is no reason to believe that the Board may not approve them and allow them to exist as well.

In order for generators to obtain financing for generation projects, they frequently must demonstrate to their lenders that they have a long-term agreement for the delivery of natural gas to the generation facility. Evergreen provisions assist with such financing. Alternatively agreements without evergreen provisions that last as long as 20 years, could also be appropriate.

Finally, South Jersey would not object to filing a notice with the Board in advance of the Board granting a contract extension through an evergreen provision. If the Board wished, it

¹ Previously approved pursuant to Board Order in Docket No. GR03080683, July 8, 2004.

could then commence an inquiry into whether such an extension should be implemented. A requirement of obtaining annual Board approval to exercise an evergreen extension would be unwieldy, and detrimental to the development of generation in this State.

C. South Jersey Does Not Propose To Address The Criteria That Should Be Applied By Other Companies To Assess Whether A Discounted Rate Contract Should Be Implemented. However, As To South Jersey, Its Process Has Worked Well.

The Board has asked the parties to address the criteria and process that the Board should establish to determine: (1) whether or not an entity has an ability to by-pass the utility's gas distribution system; and (2) what rates should be charged to such entities.

As noted above, the procedures and criteria contained in South Jersey's existing tariff have worked well. By-pass is one, but not the only consideration for determine whether to issue a discounted rate. These referenced procedures and criteria have worked well, and South Jersey believes that they should be continued.

If each utility is directed to make its own filing, no rulemaking proceeding will be necessary. Rather, each petition will be a "Contested Case" under the State Administrative Procedures Act, *N.J.A.C. 1:1-2.1*, and the tariff proposal of each utility will be judged on its merits.

D. The Board Can And Should Permit Contracts To Electric Generators That Discount Or Eliminate The SBC, RGGI And CAC Charges.

If necessary to promote social good in this State, as it may be, this Board should permit contracts between natural gas utilities and electric generators that provide for reduction or elimination of the SBC, RGGI and CAC charges (or in South Jersey's case, EET and CIRT charges). The public policy reasons behind such discounts are the same public policy reasons underlying other discounts which can be applicable to electric generation rates.

The legality of such discounts has been established. In particular, the Electric Discount and Energy Competition Act (“EDECA”) established and set forth the basis for implementing the SBC. EDECA states that the SBC shall be collected on a non-bypassable basis, from all electric public utility customers and gas public utility customers “*as appropriate.*” Principles of statutory construction make it clear that the Board may allow waiver of the SBC if it finds the same appropriate. Thus, the SBC may be passed on to customers, if appropriate, or put differently, need not be passed on to customers where inappropriate.

Moreover, the Board has held that with respect to negotiated rates, there is no requirement to extend the SBC. In *Re Public Service Electric and Gas Co.*, Dkt. Nos. EO97070461, EO97070462, and EO97070463, August 24, 1999 (Final Decision and Order), October 19, 1999 (Order Denying Motion for Reconsideration), Co-Steel, a large industrial customer of PSE&G took power pursuant to a contract under PSE&G’s Experimental Hourly Energy Pricing Service tariff approved by the Board. The contract provided that Co-Steel’s first 13 million kWhs consumed each month and related demand (Block 1) would be priced under PSE&G’s High Tension Service tariff (“HTS”) and the remainder (Block 2) under a separate contract rate which took into account certain adjustments. Co-Steel objected to the paying for *inter alia*, the Market Transition Charge (MTC), the Transition Bond Charge (TBC) and the SBC regarding the HTS tariff. The Board therein held that EDECA “makes clear that the MTC, TBC and SBC are to be non-bypassable charges”. *See* Final Decision and Order at 70. “Customers on the HTS tariff, must therefore be assessed MTC, TBC and SBC charges.” *See* Final Decision and Order at 70. The Board held then that Co-Steel was required to pay the MTC, TBC and SBC charges as they relate to its Block 1 HTS tariff usage. The Board went on to hold however, that “Co-Steel’s Block 2 usage will be governed by the special contract, and, therefore, the price

thereof will be unaffected by this Order.” *Id.* This was true because the rates applicable to Block 2 usage were negotiated, contract rates—not tariff rates.

Of course, much of this discussion will be moot should the Governor sign into law Senate Bill No. 2381, providing that neither the SBC, nor any other charge designed to recovery the costs for social, energy efficiency, conservation, environmental or renewable energy programs shall be imposed on natural gas delivery service or sales service used to generate electricity that is sold for resale.

III. CONCLUSION

Thank you for the opportunity to provide these comments on behalf of South Jersey, and for your consideration in this matter.

Respectfully yours,

COZEN O'CONNOR



By: Ira G. Megdal

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