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November 28, 2011

By Overnight Delivery Service and Electronic Mail
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions--
Public Service Electric and Gas Co., BPU Dkt. No. GT11090616
South Jersey Gas Co., BPU Dkt. No. GT11090617
New Jersey Natural Gas Co., BPU Dkt. No. GT11090618
Elizabethtown Gas Co., BPU Dkt. No. GT11090609

Dear Secretary Izzo:

Please accept for filing an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") concerning proposed tariff sheets submitted by Elizabethtown Gas Company ("ETG"), New Jersey Natural Gas Company ("NJNG"), Public Service Electric and Gas Company ("PSE&G"), and South Jersey Gas Company ("SJG") in accordance with the Board's August 18, 2011 Order ("August 18 Order") in the above-referenced matters. 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.

The utilities' compliance filings raise several issues that require resolution by the Board. Those issues, and Rate Counsel's recommendations as to each, are set forth below.

RATE COUNSEL'S COMMENTS

I. Applicability of Rate Discount Provisions

Two of the utilities, ETG and NJNG, have proposed to include provisions regarding discounted rates within the "Standard Terms and Conditions" sections of their tariffs for natural gas service. Thus, these provisions would apply to any customer seeking a discount from the applicable tariff rate. This approach appears consistent with the August 18 Order. The Board directed the utilities to file proposed tariff sheets specifying the criteria and processes for customers requesting discounted rates. Specifically, with regard to rate discounts based on the ability to physically bypass the utility's distribution systems the utilities were directed to file tariff sheets that specifying the information "that a customer must submit" when requesting a discount. August 18 Order at 24. With regard to discounts requested for other reasons, the utilities were required to submit tariff sheets "delineating how rate discounts based on circumstances other than physical bypass will be evaluated by the utility and describing the process for applying for those special rates." Id. This language appears to contemplate tariff provisions that will apply generally to all customer requests for discounts. ETG and NJNG have followed this approach by proposing provisions to be included in the "Standard Terms and Conditions" sections of their tariffs.

PSE&G and SJG are both proposing tariff provisions that would apply to only limited classes of customers. PSE&G is proposing to adopt a new "Rate Schedule CSG – Contract Service," which would be available only to very large customers having a maximum delivery requirement of not less than 150 therms per hour. PSE&G proposed Original Sheet No. 112. Although as a practical matter customers requesting rate discounts are likely to be large customers, the August 18 Order does not appear to contemplate that rate discounts will be restricted to customers meeting a specified usage threshold. PSE&G should be directed to submit proposed tariffs that apply to any and all customers that may seek discounted rates.

SJG already has two rate schedules that include provisions allowing rate discounts: “Electric Generation Service – Large Volume” (“EGS-LV”), which applies to commercial and industrial electric generation facilities, with contract demands of 200 Mcf per day or more, and “Firm Electric Service” (“FES”), which applies to very large electric generation customers with Winter Daily Contract Demands of 1,000 Mcf per day, Summer Daily Contract Demands of 2,000 Mcf per day, or both. SJG is proposing to incorporate rate discount language within one of those rate schedules, EGS-LV. This raises two concerns. The first is that SJG would limit rate discounts to large electric generators. As discuss above, the August 18 Order appears to contemplate rate discount provisions that will apply to all customers. Second, SJG is proposing to retain the language that permits rate discounts for customers qualifying for its FES tariff—but is not proposing to incorporate the language mandated by the August 18 Order in the FES rate schedule. Thus, SJG apparently would exempt this class of customer from the criteria and processes established by the Board for the granting of rate discounts. SJG should be directed to propose tariff provisions that apply to all customer seeking rate discounts, as contemplated in the August 18 Order.

II. Criteria for Rate Discounts

The August 18 Order specified the criteria and related information requirements for customers seeking rate discounts based on an ability to bypass the utility’s local gas distribution system. While the four utilities’ filings include some variations in language contained in the Order, all appear to be proposing language that complies, in substance with the Order.

With respect to discounts for reasons other than physical bypass, the Board directed the utilities to file proposed tariff sheets "that establish criteria it will use to determine whether a customer is eligible for a discounted rate on any other grounds, or in the alternative, explain why it believes its existing tariff provisions are adequate." August 18 Order at 24. Of the four utilities, only ETG has attempted to specify any criteria for granting rate discounts for reasons other than physical bypass. Under ETG's proposal, such discounts would be granted only if necessary to prevent "economic bypass of the Company's distribution system" or "the loss of load that could otherwise be served at rate that would exceed marginal costs." ETG Proposed First Revise Sheet No. 35.

ETG's proposed tariff language is consistent with the reasoning articulated by the Board for allowing rate discounts for reasons other than physical bypass. At page 20 of the August 18 Order the Board, responding to Rate Counsel's argument that discounts should be allowed only to avoid physical bypass, stated follows:

> The Board disagrees with the implication that by their very nature Discount Agreements are subsidized by other ratepayers.

August 18 Order at 20. The Board then addressed discounts granted to avoid a physical bypass cases, noting:

> In by-pass cases there is, almost by definition, no subsidization since the primary objective of granting a discount is to avoid losing revenues from the potential by-pass customer with the fixed costs eventually being assumed by the remaining customers.

Id. The Board then addressed discounts for reasons other than physical bypass. After observing that the Board requires all discounted rates to "produce revenue that, at a minimum, results in a return that equals the class average return," the Board explained why rate discounts for reasons other than physical bypass would not result in subsidies from other ratepayers:

> It is critical to note that absent a discount, revenues would either drop, in the case of the loss of an existing customer, or additional revenues would not materialize, in the case of a new customer or an expansion of service to an existing customer. If those lost revenues exceed the incremental cost of maintaining or expanding service or providing service to a new customer, the remaining customers will eventually have to make up for this lost revenue as the fixed costs of the system would be spread over lower throughput.

Id. Thus, the Board's rationale for allowing discounts for reasons other than physical bypass rests on a fundamental assumption: that rate discounts will be granted only when existing revenues "would … drop" or "additional revenues would not materialize" in the absence of a discount. ETG's proposed tariff language, which restricts discounts to circumstance involving "the loss of load that could otherwise be served at rates that would exceed marginal costs" (ETG Proposed First Revised Sheet No. 35A), is consistent with the Board's rationale as explained above.

The other three utilities have simply proposed to allow rate discounts for broadly defined and "other" reasons. Specifically, the other three utilities have proposed as follows:

- NJNG: Customers may request rate discounts "due to circumstances other than the asserted ability to physically bypass the Company's distribution and/or transmission system facilities …." The customer must provide "all of the information that the Company deems appropriate in considering the Customer's request, and requests will be "evaluated on a case-by-case basis to determine whether a discount from NJNG's Tariff Rate for Gas Service would be just and reasonable." (NJNG Proposed Original Sheet No. 38.)

- PSE&G: "Service under [proposed Rate Schedule CSG] based on other considerations may be provided." Such considerations may "includ[e] but [are] not limited to the public interest, economic development, the benefit to Public Service ratepayers and/or to spur the New Jersey economy." (PSE&G Proposed Original Sheet No. 112.)

- SJG: "Customers may request a discounted rate under this rate schedule for reasons other than physical bypass of the Company's facilities." Those reasons may "includ[e] but [are] not limited to whether the discount is in the public interest, how the discounted rate would spur economic development, and/or how

> the discounted rate would benefit the Company's ratepayers." (SJG Proposed Amended Revised Sheet No. 48.)

The tariff language proposed by ETG, PSE&G and SJG does not limit rate discounts to the circumstances defined by the Board. None of the three utilities would require a showing that revenues would be lost, or would not materialize, without the requested discount, and two of them, PSE&G and SJG, would allow rate discounts based on unspecified "public interest" considerations. The ETG, PSE&G and SJG tariff proposals are inconsistent with the Board's intent to limit rate discounts to circumstances where discounts are necessary to preserve or create revenues for the benefit of the utility's other ratepayers. These three utilities should be directed to submit proposed tariff language that clearly limits discounts as articulated in the August 18 Order.

III. Application and Approval Process for Rate Discounts

The four utilities' proposals include varying provisions concerning the process for applying to the utility and seeking Board approval for a rate discount. Specifically, the utilities are proposing the following:

- ETG: The Company "will respond to any request for negotiated rates, terms and conditions within sixty (60) days of receiving a customer's written request and all required information." (ETG Proposed First Revised Sheet No. 35A.) Negotiated rates are "subject to prior approval by the New Jersey Board of Public Utilities." (ETG Proposed First Revised Sheet No. 35.)

- NJNG: The proposed tariff provision states that "each request will be evaluated on a case-by-case basis" after the Company's receipt of all required information. The proposed tariff language does not specify a time frame is provided for the Company to respond to the customer. Discounted rate agreements are "subject to Board approval." (NJNG Proposed Original Sheet No. 38.)

- PSE&G: The Company will "review all applications to verify for completeness within 45 days of receipt" and then "notify customer of the information needed to complete the application." When the application is complete the Company "will have 45 days to complete its analysis and respond to the customer." After an agreement is reached the Company "will forward the application to the Board of Public Utilities for review and approval." (PSE&G Proposed Original Sheet No. 112.)

- SJG: The proposed tariff provision states that the Company may offer rate discounts "on a negotiated basis." The proposed tariff language does not specify any time frame for responding to a customer's request for a rate discount. Rate discount agreements will be "filed with the Board within thirty (30) days of execution, for approval."(SJG Proposed Amended Revised Sheet No. 48.)

Rate Counsel believes it would be preferable to have a uniform process for consideration of rate discount requests statewide. The Board should direct its Staff to initiate discussions among the parties to develop such a uniform process to be incorporated in the tariffs of all four utilities.

IV. Rate Formulas

PSE&G's proposed tariff sheets include fixed formulas for determining the rates to be charged to customers requesting rate discounts based on an ability to physically bypass the Company's distribution system. Specifically, PSE&G is proposing to charge a service charge of $465.59 per month, plus a "Distribution Charge" and "Maintenance Charges," both of which would be determined by multiplying the customer's "Net Alternative Delivery Cost" by a multiplier specified in the tariff. PSE&G Proposed Original Sheet No. 112A. "Net Alternative Delivery Cost" is defined elsewhere in the proposed tariff as an estimated up-front cost to bypass based on "a detailed cost estimate provided by the applicable interstate pipeline," less "any customer contribution made to Public Service to provide service under this Rate Schedule …." PSE&G Proposed Original Sheet No, 112C.[1] The proposed multipliers would vary based upon whether the customer requested a five, ten or twenty-year contract term.

[1] A different formula would apply to customers requesting interruptible service, i.e. the sum of 90% of the estimated up-front cost to bypass, plus 10% of PSE&G's incremental cost to provide interruptible service, net of customer contributions. PSE&G Proposed Original Sheet No. 112C.

None of the other three utilities have proposed specific formulas for determining the amount of a rate discount. ETG's, NJNG's and SJG's proposed tariff sheets contemplate that that discounted rates will be determined through negotiation with the customer, subject to review by the Board. Thus, for ETG, NJNG an SJG the Board would continue its practice of evaluating rate discounts based on the circumstances of each case. Thus, negotiations with the customer, and the Board's consideration of a proposed rate discount, can consider individual circumstances such as the economics of the bypass option for the customer, and the utility's cost of serving the customer.

PSE&G's filing does not include any calculations or analysis to support its proposed formulas. Further, as explained above, instead of allowing consideration of the economics of each individual bypass situation, PSE&G is proposing to determine the amounts of discounted rates based on a formula that relies, in turn, on a cost estimate provided by an interstate pipeline. Thus, it its appears questionable whether the proposed formulas would result in rates that would be reasonable given the cost of a specific customer's bypass alternative and the costs of providing service to that customer. PSE&G's proposed formulas should be rejected, and PSE&G should be directed to file proposed tariff sheets consistent with the approach followed by the other three utilities.

V. Confidentiality

PSE&G has proposed that all rate discount agreements be made public upon approval by the Board. (PSE&G Proposed Original Sheet No. 112.) While Rate Counsel favors transparency, Rate Counsel would not object if the Board were to continue its established practice of considering requests for confidential treatment as part of its consideration of rate discount agreements. The Board's existing practice has been codified in N.J.A.C. 14:1-12, and has been followed in many proceedings involving requests for approval of rate discount agreements, including a recent petition filed by PSE&G. I/M/O the Petition of Public Service Electric and Gas Company for Protective Orders and Exemption from Public Disclosure of Confidential Information and Approval of Gas Purchase Contract with North Jersey Energy Associates Ltd. Partnership, BPU Dkt. No. GO11050282, Decision and Order at 2-3 (Oct. 13, 2011). PSE&G has not presented any justification for the Board to change its established practice. Further, no party to these generic proceedings argued that rate discount agreements should automatically be made public upon approval by the Board. The Board did not address this issue in the August 18 Order. For these reasons, PSE&G should be directed to file proposed tariffs that are consistent with the Board's existing practice.

VI. Rate Treatment of Revenues

PSE&G's filing includes a request for the Board to determine the rate treatment of revenues received under its proposed new CSG rate schedule. PSE&G compliance filing at 4-5. This request is beyond the scope of these proceedings. The August 18 Order did not address the rate treatment of revenues from discounted rates, nor were the utilities directed to submit ratemaking proposals. Further, PSE&G's proposal would require review and discovery to determine whether it is consistent with the Stipulation and Order in the Company's most recent base rate case. PSE&G's ratemaking proposal should therefore be rejected.

CONCLUSION

For the foregoing reasons, the Board should (1) direct PSE&G and SJG to file proposed tariff provisions that apply to all customers seeking rate discounts; (2) require NJNG, PSE&G, and SJG to file proposed tariff provisions that limit rate discounts for reasons other than physical bypass to circumstances in which a rate discount is necessary to preserve existing revenues, or create new revenues that would not materialize in the absence of a discount; (3) direct its Staff to initiate discussions among the parties to develop a rate discount application process to be incorporated in the tariffs of all four utilities; and (4) reject PSE&G's rate discount formulas; (5) reject PSE&G's proposal to make all rate discount agreements public upon Board approval, and (6) reject PSE&G's proposal regarding the ratemaking treatment of revenues from discounted rates.

Respectfully submitted,

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