



Agenda Date: 3/26/18
Agenda Item: 21

STATE OF NEW JERSEY
Board of Public Utilities
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Energy

IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES' CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017))))	ORDER DOCKET NO. AX18010001
IN THE MATTER OF PUBLIC SERVICE ELECTRIC & GAS COMPANY FOR APPROVAL OF REVISED RATES (EFFECTIVE ON AN INTERIM BASIS APRIL 1, 2018) TO REFLECT THE REDUCTION UNDER THE TAX CUTS AND JOBS ACT OF 2017))))))	AND DOCKET NO. ER18030231

(SERVICE LIST ATTACHED)

Parties of Record:

Matthew Weissman Esq., Public Service Electric and Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Steven S. Goldenberg, Esq., Fox Rothschild, LLP, on behalf of New Jersey Large Energy
Users Coalition

BY THE BOARD:

This Board Order addresses the interim rate changes to be effective April 1, 2018 that are proposed in the petition filed by Public Service Electric & Gas Company ("PSE&G" or "Company") in response to an order issued by the New Jersey Board of Public Utilities ("Board") on January 31, 2018 ("January 31, 2018 Order")¹, directing the affected utilities² to file petitions proposing new rates reflecting the impacts from the Federal Tax Cuts and Jobs Act signed into law on December 22, 2017 (the "2017 Act").

¹ See In re the New Jersey Board of Public Utilities Consideration of the Tax Cuts and Jobs Act of 2017, BPU Docket No. AX18010001 (Order dated January 31, 2018).

² The affected utilities are investor owned gas, electric, water and wastewater companies under the jurisdiction of the Board. In addition, affected utilities shall be those with 2017 revenues equal to or greater than \$4.5 million.

BACKGROUND

The effective date of the 2017 Act is January 1, 2018. The 2017 Act sets forth changes to the Federal Internal Revenue Tax Code ("Tax Code"), including a reduction in the maximum corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). The Board is charged with the authority to ensure that the regulated utilities' rates charged to ratepayers are just and reasonable. When the Board sets rates in base rate cases and in certain annual/periodic clauses, utilities are permitted to gross up their revenue requirement as well as set other rate factors, including, the accumulated deferred income tax, based on the then existing thirty-five percent (35%) corporate tax rate.

The Board issued the January 31, 2018 Order which set all affected utility rates as interim and established a proceeding to consider the implications of the 2017 Act. Based upon the Board's review of the 2017 Act, the Board found in its January 31, 2018 Order that the changes to the Tax Code will provide savings to the affected utilities and will result in an over-collection of tax revenue by the affected utilities that will not be paid in federal income taxes. The affected utilities were required to file amended tariffs reflecting a reduction in rates resulting from the reduction in the corporate tax rate effective April 1, 2018, as well as a plan to address other rate factors and to refund any over collection in rates.

On March 2, 2018, the Company filed its petition pursuant to the January 31, 2018 Order, including proposed tariffs as well as a proposed plan. Based on the 2017 Tax Act, the Company has recalculated its current base rates and is proposing the following to be effective April 1, 2018: (1) a rate reduction of \$71 million or 1.4% for its residential electric customers; and (2) a rate reduction for its gas residential customers of \$43 million or 2.6%. The total proposed combined electric and gas rate reduction is \$114 million or 1.9%. PSE&G proposed to refund its customers based on the proposed rate decrease for the period between January 1, 2018 through March 31, 2018, which is the same mechanism proposed in its pending base rate case in BPU Docket Nos. ER18010029 and GR18010030 for a new Tax Adjustment Credit ("TAC"). The Company proposed to return the amount over the twelve (12) month period following the conclusion of the Company's pending base rate case (estimated October 1, 2018), with interest at the short term debt rate.

PSE&G calculated the excess deferred balance at \$1.252 billion (total for gas and electric service), \$476 million of which is classified as "unprotected". The Company proposes to maintain the TAC deferred balance in the pending base rate case and proposes to flow back excess protected in accordance with the Average Rate Assumption Method. Additionally, the Company proposed to flow back the excess unprotected deferred balance by offsetting deferred storm costs and returning it over the next five (5) years through TAC, all as part of the base rate case proceeding.

Regarding the use of the Weighted Average Cost of Capital ("WACC") on Excess Deferred Balance ("EDB"), PSE&G represented that plant-related EDB in Accumulated Deferred Income Tax is already offsetting (or will offset) rate base, that no interest should be accrued on the EDB since that would "double count" the tax benefit, and that it would violate IRS normalization rules for accelerated tax depreciation. This will be reviewed and analyzed further by Board Staff. PSE&G further represents the following with regard to certain clauses:

- Solar Pilot Recovery Charge/Green Program Recovery Charge: income taxes will be adjusted in pending case, revenue requirements adjusted for new tax rate effective January 1, 2018, and propose excess deferred will be adjusted in July 2018 filing.
- Weather Normalization Clause: no impact on pending filing, and the margin factors for 2018 deferral will be adjusted.
- Other Clauses: will only impact on net of tax interest, and impacts will be deferred and addressed in next filing.

The Company's proposed tariffs, include an across-the-board rate reduction reflecting the reduction in the corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). As a result, the typical residential electric customer using 750 kWh in a summer month and 7,200 kWh annually will receive an annual bill decrease of \$17.60, or approximately 1.41%. The typical residential gas heating customer using 165 therms in a winter month and 1,010 therms annually will receive an annual bill decrease of \$23.14 or approximately 2.56%.

The January 21, 2018 Order set the deadline for the filing of motions to intervene or participate on February 20, 2018.

New Jersey Large Energy Users Coalition Motion to Intervene

By motion dated February 13, 2018, the New Jersey Large Energy Users Coalition ("NJLEUC"), moved to intervene in this proceeding pursuant to N.J.A.C. 1:1-16. NJLEUC states that it was formed, in part, to monitor regulatory and rate proceedings involving the State's electric and natural gas utilities, and to intervene or participate in regulatory and rate proceedings to the extent necessary to represent its members' common interests. NJLEUC claims that its members are large end-use purchasers of electricity and natural gas distribution service from the State's regulated utilities and, therefore, have a significant interest in the outcome of this proceeding.

NJLEUC asserts that its interests with regard to the implications of the 2017 Act as it pertains to utility rates are unique from those of any other party. NJLEUC further asserts that it has a unique perspective and insight regarding the potential impact on large volume electric and natural gas customers, the utilities and stakeholders in this proceeding, as well as the potential impact of the issues to be addressed by the Board. The interests of NJLEUC's members as large end-use customers of the identified utilities are substantially different from those of any other party seeking intervention or participation. Therefore, it argues that NJLEUC's interests in this proceeding are unique on both a quantitative and qualitative basis.

Moreover, NJLEUC argues that fundamental fairness and due process considerations require that NJLEUC be afforded an opportunity to intervene in this proceeding, the outcome of which will have an impact on the cost of electric and natural gas distribution services received from the identified utilities by the members of NJLEUC. NJLEUC states that the issues to be decided in this proceeding substantially, specifically and directly affect NJLEUC within the meaning of these terms as used in the Uniform Rules, thereby making it appropriate for NJLEUC to intervene as a party.

NJLEUC points out that it has been granted intervenor status in the many regulatory that the issues to be decided in this proceeding.

In addition, NJLEUC claims that its entry as a party would measurably and constructively advance this proceeding because of the unique status of its members as large end-use customers of the identified utilities. NJLEUC also claims that its entry as a party would promote an informed and balanced presentation of the issues. NJLUEC represents that, where it is possible and practical for it to do so, it will endeavor to work cooperatively with other parties in this proceeding in the interests of administrative efficiency and economy.

PSE&G Response

On March 13, 2018, the Company filed a response to NJLEUC's motion to intervene. PSE&G contends that NJLEUC is not a formal legal entity and therefore does not have standing to intervene in the matter. The Company, however, understands that NJLEUC has moved to intervene on behalf of its member companies and subject to certain conditions, does not object to the intervention. PSE&G requests that the NJLEUC furnish a complete list of all its members, specifically identifying those members which are currently gas and/or electric customers of PSE&G.

New Jersey Large Energy Users Coalition Response

On March 20, 2018, NJLEUC provided a list of its members that receive electric and/or natural gas distribution service from PSE&G, but reserved its right to object to the identification of some or all of its members in future proceedings.

New Jersey Large Energy Users Coalition Motion for Admission Pro Hac Vice

By motion dated February 13, 2018, NJLEUC, via Steven S. Goldenberg, Esq., NJLEUC also moved for the admission pro hac vice of Paul F. Forshay, Esq. The motion included a sworn affidavit by Mr. Forshay.

Mr. Goldenberg states that Mr. Forshay is a member in good standing admitted to the bar of the District of Columbia, has had significant experience representing the interests of large end-use customers and that he has an attorney-client relationship with NJLEUC. By his affidavit, Mr. Forshay represents that he is associated with Mr. Goldenberg as New Jersey counsel of record, NJLEUC has requested his representation in this matter, and that he has experience representing NJLEUC before the Federal Energy Regulatory Commission and the Board. He states that his experience includes involvement in regulatory matters and issues, with a particular emphasis on the litigation of utility rate cases and the regulatory treatment of rate-related issues. Mr. Forshay represents that he has paid the fees required by R. 1:20-1(b) and 1:28-2, and he agrees to abide by the other requirements for admission pro hac vice. On February 15, 2018, Mr. Forshay forwarded proof of payment of the fees required by R. 1:20-1(b) and 1:28-2 to Board Staff.

DISCUSSION AND FINDINGS:

The Board has reviewed the proposed plan filed by the Company, and **HEREBY DIRECTS** that the plan will be reviewed in the Company's pending base rate case in Docket Nos. ER18010029

and GR18010030. As the rate case is currently pending before the Office of Administrative Law ("OAL"), this issue shall be forwarded to the OAL to be included in that proceeding.

The Company's proposed tariffs include an across-the-board rate reduction reflecting the decrease in the corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). As mentioned above, the typical residential electric customer using 750 kWh in a summer month and 7,200 kWh annually will receive an annual bill decrease of \$17.60 or approximately 1.41% and the typical residential gas heating customer using 165 therms in a winter month and 1,010 therms annually will an annual bill decrease of \$23.14 or approximately 2.56%. Having reviewed the proposed tariffs, the Board **HEREBY DIRECTS** new tariffs to be filed by the Company by April 1, 2018 relating to the across the board rate reduction for services to be rendered on or after April 1, 2018. The rates set forth in the tariffs are on an interim basis, subject to refund, pending the outcome of the Company's pending base rate case. The Board will address refunds and other proposed rider tariffs at a later date.

Motion to Intervene

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider the following factors:

1. The nature and extent of the moving party's interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect for confusion and delay arising from inclusion of the party; and
4. Other appropriate matters.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct and different from that of the other parties so as to add measurably and constructively to the scope of the case. See, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (Order dated June 8, 2005). The Board further notes that NJLEUC is an intervenor in the Company's base rate case in which the issues in this proceeding will be reviewed.

After consideration of the papers, the Board **HEREBY FINDS**, pursuant to N.J.A.C. 1:1-16.6(b), the members of NJLEUC who are customers of PSE&G will be directly affected by the outcome of this proceeding, and that NJLEUC has met the standards for intervention, as it is an interested party in this proceeding. Accordingly, the Board **HEREBY GRANTS** the motion for intervention of NJLEUC.

Motion for Admission Pro Hac Vice

The Board has also reviewed NJLEUC's pro hac vice motion and the supporting affidavit of Mr. Forshay. This proceeding involves a complex field of law, and the Board is persuaded that Mr.

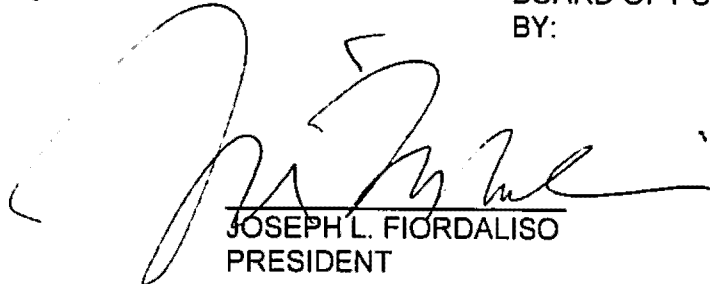
Forshay specializes in this area and has an attorney-client relationship with NJLEUC. Having received no objections to the motion after due notice to the parties, the Board **FINDS** that Mr. Forshay has satisfied the conditions for admission pro hac vice, has submitted to the Board proof of payment to the New Jersey Lawyers' Fund for Client Protection of the fees required by R. 1:20-1(b) and 1:28-2, and therefore, Mr. Forshay **IS HEREBY ADMITTED** to practice before the Board pro hac vice in this matter provided that he shall:

1. Abide by the Board's rules and all applicable New Jersey court rules, including all disciplinary rules;
2. Consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against each of them that may arise out of his participation in this matter;
3. Notify the Board immediately of any matter affecting his standing at the bar of any other jurisdiction; and
4. Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice in this State, who shall be held responsible for them and for the conduct of this cause and the admitted attorney therein.

This Order shall be effective March 29, 2018.

DATED: 3/26/18

BOARD OF PUBLIC UTILITIES
BY:




JOSEPH L. FIORDALISO
PRESIDENT



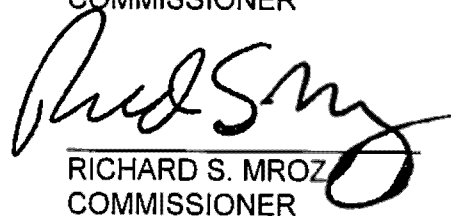
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ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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