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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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Governor

SHEILA OLIVER
Lt. Governor

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STEFANIE A. BRAND
Director

August 2, 2019

FORWARD
CASE MANAGEMENT
2019 AUG -7 A 9:
BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Via Electronic Mail and US Regular Mail
Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
P.O. Box 350
Trenton, NJ 08625-0350

Re: Petition for Approval of a Third Amendment to Lease Agreement Public Service Electric and Gas Company Third Amendment to Lease Agreement to Kinder Morgan Liquids Terminals LLC
BPU Docket No. EM19060721

Dear Secretary Camacho-Welch:

Please accept for filing the original and ten copies of the comments of the Division of Rate Counsel ("Rate Counsel") regarding the above-referenced Public Service Electric and Gas Company's ("PSE&G" or "Company") for approval of a Third Amendment to a Lease Agreement to Kinder Morgan Liquids Terminals LLC ("Kinder Morgan"). Enclosed is one additional copy. Please date stamp the copy as "filed" and return to our courier. Thank you for your consideration and attention to this matter.

Case Mgmt
R. Westland, Esq
A. Hart, Esq

SUMMARY

In the above-referenced Petition involves an agreement under which Kinder Morgan leases a pipeline that is owned by PSE&G but which is no longer used and useful for utility purposes. The Petition seeks a waiver of the requirement of N.J.A.C. 14:1-5.6(i)(7), which would otherwise require the Company to advertise the subject property before entering into the Third Amendments. Rate Counsel has no objection requested waiver, provided PSE&G continues to record the resulting revenues "above the line" for the benefit of the Company's ratepayers.

STATEMENT OF FACTS

The original agreement PSE&G and GATX Corporation, Kinder Morgan's predecessor in interest, was filed with the Board in November 1993 and approved in a Board Decision and Order dated November 30, 1994. I/M/O the Petition of Public Service Electric and Gas Company for Approval 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, State of New Jersey to GATX Terminals Corporation, a Delaware Corporation, for the Annual Rent of Two Hundred Seventy-Nine Thousand Dollars ($279,000.00), BPU Dkt. No. GM93120531 (Nov. 30, 1994) (the "1994 Board Order"). The subject of the lease is a twelve-inch underground steel pipeline that was formerly used by PSE&G to transport naphtha, a petroleum product. The pipeline was retired by PSE&G in 1989 and is no longer used and useful for utility purposes. Id., p. 1. Under the agreement, a portion of the pipeline was leased to GATX Corporation for the transport of liquid hydrocarbon products. Petition, Exhibit A to Trudeau Affidavit, p. 1. The lease term was fifteen years, with an annual rental of $279,000, plus an annual operation and inspection fee of $12,000. Id.

In an Order dated November 30, 2011 the Board approved an amendment dated December 28, 2910 that modified the original agreement and extended its term through December 31, 2013. I/M/O 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 per Year, BPU Dkt. No. GM11030190 (Nov. 30, 2011) (the "2011 Board Order). The amended agreement (1) increased the annual rental to $325,000 per year, (2) increased Kinder Morgan's obligations to indemnify PSE&G, (3) eliminated PSE&G's obligation to operate and maintain the pipeline, along with the annual operation and maintenance fee. Id. p. 1-2. The 2011 Board Order noted that the revenues from the lease agreement were being treated as "above the line" for ratemaking purposes, and ordered that the level of rental revenues be reviewed in the Company's next base rate case 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. Id., p. 2-3.

A Second Amendment dated October 24, 2013 was approved by the Board on March 18, 2015. I/m/o the Petition of Public Service Electric and Gas Company for a Second Amendment of Lease to Kinder Morgan Liquid Terminals, LLC with Waiver, BPU Dkt. No. GM13111018 (March 18, 2015) (the "2015 Board Order"). This amendment (1) restructured the agreement as a one-year agreement with options to extend for four additional one-year terms, (2) increased the annual rental to $331,500, subject to a 2% increase for each of the four one-year extension options. Id., p. 2. The Board's Order approving the Second Amendment continued that any revenues be treated as "above the line" for the benefit of ratepayers. Id., p. 3.

The Third Amendment (1) structures the lease as a one-year agreement with two options to renew for one year, and (2) increases the annual rental to $336,180, subject to a 2% increase for each of the optional one-year extensions. Petition, par. 3. PSE&G has submitted with the Petition an appraisal finding that the fair market rental value of the pipeline is $359,000. Petition, par. 3 & Exhibit E to Trudeau Affidavit. The Petition asserts that the pipeline has only limited uses, and that advertising would be unlikely to yield a higher rental value. Petition. par, 5.

RATE COUNSEL COMMENTS

Rate Counsel does not object to the proposed waiver. Rate Counsel has reviewed the Petition, the accompanying Affidavit of Roger J. Trudeau and the materials submitted as attachments to Mr. Trudeau's affidavit. PSE&G is seeking the waiver for the following reasons:

(1) the public interest will not be affected because the Company is seeking to amend a currently existing lease;

(2) the property is no longer used and useful for utility purposes;

(3) there is no other prospective use for the subject pipeline, which has been used by Kinder Morgan and its predecessor in interest since 1994

(4) the rental price exceeds the fair market rental value of the property;

(5) there is no relationship between the Company and Kinder Morgan other than that of landlord and tenant

(6) the pipeline is unique and has limited use given is use since 1994;

(7) advertising and bidding would likely not result in a higher rental price;

(8) there are limited potential users for the pipeline.

Petition, par. 5. The historical information stated in items (1), (2) and (6) are matters of record as reflected in the Board's prior orders concerning the lease. The remaining statements appear to be supported by the appraisal submitted as Exhibit E to the Affidavit of Roger J. Trudeau that was filed with the Petition. Rate Counsel notes specifically that the agreed rental payments reflect the two percent annual escalation that has been in effect since the effective date of the First Amendment to the lease agreement. Accordingly, Rate Counsel has no objection to the granting of the requested waiver.

Such waiver should, however, be conditional on the continued treatment of the revenues resulting from the lease as "above the line" for ratemaking purposes. As the Board has noted in previous Orders, while the pipeline is no longer used and useful, PSE&G's gas customers paid for it and accordingly should benefit from the revenues resulting from the lease. 2011 Board Order, p. 2; 2015 Board Order, p. 3.

CONCLUSION

For the above, Rate Counsel does not object to the granting of the requested waiver of the advertising requirements of N.J.S.A. 14:1-5.6(i)(7), provided the Board Order granting the waiver requires the Company to continue reflecting the revenue resulting from the subject lease as "above the line" for ratemaking purposes.

Respectfully submitted,

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

By: Sarah H. Steindel

Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

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c: Service List

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