



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE 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 )

DECISION AND ORDER

DOCKET NO. EM19060721

**Parties of Record:**

**Ana J. Murteira, Esq.**, Public Service Electric and Gas Company  
**Stefanie A. Brand, Esq.**, New Jersey Division of Rate Counsel

BY THE BOARD:

On June 13, 2019, Public Service Electric and Gas Company (“PSE&G” or “Company”) filed a petition with the New Board of Public Utilities (“Board” or “BPU”) seeking approval for a third amendment (“Third Amendment”) to the Lease Agreement with Kinder Morgan Liquids Terminals LLC (“Kinder Morgan”) to operate and transport light oils through a wholly owned PSE&G 12 inch steel pipe (“Pipe”) and associated rights-of-way (“ROW”) in the Township of Carteret and the City of Linden.

**BACKGROUND AND PROCEDURAL HISTORY**

The Pipe was acquired by PSE&G in 1975 and was operated by the Company along the ROW it had procured by easement to transport naphtha, a petroleum product. The Pipe was retired by PSE&G in 1989, and subsequently leased to Kinder Morgan, as successor to GATX Terminals Corporation, under a Lease Agreement as approved by the Board Order dated July 19, 1994 in Docket No. GM93120531 (“Lease Agreement”). The Lease Agreement was amended by a First Amendment of Lease dated December 28, 2010 and approved by Board Order dated November 30, 2011.<sup>1</sup> By Order dated March 18, 2015, the Board approved a Second Amendment dated November 13, 2013.<sup>2</sup>

<sup>1</sup> In re the Petition of Public Service Electric and Gas Company For Approval of a 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 Corp, a Delaware Corp. For the Sum of 325,000.00 Per Year, Docket No. GM11030190 (November 30, 2011).

<sup>2</sup> In re the Petition of Public Service Electric and Gas Company For Approval of a 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 Corp, a Delaware Corp. For the Sum of 331,500.00 Per Year, Docket No. GM13111080 (March 18, 2015).

In the instant petition, PSE&G is seeking approval of a one (1) year extension of the lease with two (2) options for an additional year each. The amended lease would be at an annual rate of \$366,180 with a two-percent (2%) increase in the rental each of the two (2) one year options.

In the petition, PSE&G indicated that it has not used the Pipe for its intended purpose since 1989, Kinder Morgan has been using it since 1994, and the lease will not hinder operations or the ability to provide reliable services.

Additionally PSE&G sought a waiver of the requirement to advertise the property pursuant to N.J.A.C. 14:1-5.6(i)7 for the following reasons:

1. The waiver shall not adversely affect the public interest because PSE&G is seeking to amend a currently existing lease;
2. The subject property is no longer used and useful for utility purposes;
3. 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 and have been since 1994;
4. The rental price exceeds the fair market value;
5. There is no relationship between Kinder Morgan and PSE&G other than landlord and tenant;
6. The leased premises are unique and there are limited uses for the leased premises given the use of the Leased Premises since 1994;
7. Advertising and bidding will likely not result in a higher rental price;
8. There are a very limited number of users who could likely use the leased premises for its intended purpose.

On August 2, 2019, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted its written comments in this matter. Rate Counsel indicated that it does not object to the Company's request for the waiver of N.J.A.C. 14:1-5.6(i)7. However, Rate Counsel said that such waiver should be conditioned on the continued treatment of the revenues resulting from the lease as "above the line" for ratemaking purposes. Rate Counsel stated that as the Board provided in previous Orders, while the Pipe 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.

### **DISCUSSION AND FINDINGS**

As noted in previous Orders, 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 Morgan. As all other requirements of N.J.A.C. 14:1-5.6 have been satisfied, the Board **HEREBY FINDS** the requested waiver of the advertising requirement pursuant to N.J.A.C. 14:1-5.6(i)7 will not adversely affect the public interest.

The Board further notes that the Pipe is no longer used and useful for utility purposes. However, because 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 Third Amendment is reasonable because it exceeds 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 the Third Amendment should 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.

The Board further notes that the Third Amendment 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 Pipe by Kinder Morgan, its employees, agents or contractors. Additionally, Kinder Morgan will be responsible for maintaining the Pipe in accordance with Pipeline and Hazardous Materials Safety Administration's new regulations, Department of Transportation part 195.

After a review of the record, the Board **HEREBY FINDS** that the proposed Third 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 Third Amendment to the Agreement. Further, the Board **HEREBY DIRECTS** that the level of the rental revenues 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. If the Agreement expires before the Company files its next base rate case, six (6) months prior to the expiration, the Company shall submit an analysis of whether the Pipe should be sold for the benefit of its ratepayers after expiration.

Additionally, the Board **HEREBY DIRECTS** PSE&G to submit the Board's Bureau of Pipeline Safety:

1. A written certification regarding inspections and maintenance performed on the Pipe within 10 days of same being performed;
2. A copy of the Kinder Morgan Pipeline Integrity Plan; and
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 leaking of pipeline product, any hazardous situation, or any situation that may compromise the safety of the Pipe.

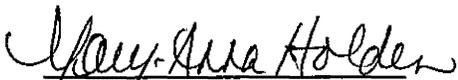
The approval of the Third Amendment is the third modification of the Board's 1996 Order. All other terms and conditions not specifically modified by approval of the third Amendment remain as set out in the prior Orders, and shall remain in full force and effect unless subsequently modified by the Board.

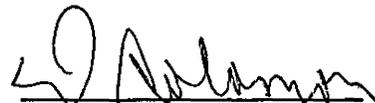
This Order shall be effective as of September 21, 2019.

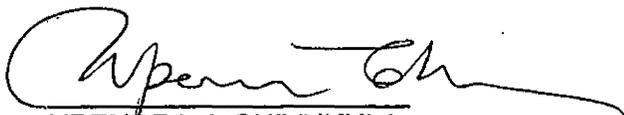
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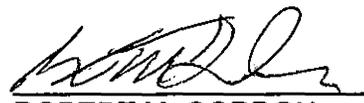
BOARD OF PUBLIC UTILITIES  
BY:

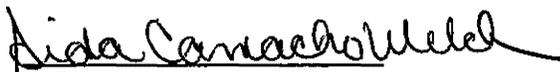
  
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COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.

IN THE MATTER OF THE 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.

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