



Agenda Date: 9/9/20
Agenda Item: 2B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF NEW) ORDER APPROVING SERVICE
JERSEY NATURAL GAS COMPANY AND) AGREEMENT AMENDMENT
ESSENTIAL POWER OPP, LLC FOR APPROVAL)
OF 1) AN AMENDMENT TO THE SERVICE)
AGREEMENT AND 2) A PROTECTIVE ORDER)
AND EXEMPTION FROM PUBLIC DISCLOSURE)
OF CONFIDENTIAL INFORMATION) DOCKET NO. GO20010091

Parties of Record:

Andrew K. Dembia, Esq., New Jersey Natural Gas Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
George M. Knapp, Esq., General Counsel, Cogentrix Energy Power Management, LLC

BY THE BOARD:

On January 31, 2020, New Jersey Natural Gas Company (“NJNG” or “Company”) and Essential Power¹ (collectively, “Petitioners”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking approval of an amendment (“First Amendment”) to the Original Service Agreement for Service Classification Firm Transportation between NJNG and Essential Power, and to establish a Protective Order and exemption from public disclosure of confidential information (“January 2020 Petition”).

BACKGROUND

Essential Power owns and operates a dispatchable electric generation facility located at 122 Energy Way, Lakewood, New Jersey. By Order dated June 20, 2003, the Board approved the Original Service Agreement.² As stated in the Original Service Agreement, Essential Power’s actual daily receivables was to exactly match their daily nomination, and Essential Power’s actual daily deliveries exactly match actual daily receivables. An Operational Balancing Account (“OBA”) is provided if Essential Power’s actual deliveries vary from its actual takes on any given gas day. In 2018, NJNG

¹ Essential Power OPP, LLC (“Essential Power”) is the successor in interest to Ocean Peaking Power, LLC.

² In re the Petition of New Jersey Natural Gas Company for Approval of a Service Agreement Between NJNG and Ocean Peaking Power LLC, BPU Docket No. GR02120947, Order dated June 20, 2003.

contacted Essential Power to discuss amending the gas volumes set forth in the Original Service Agreement regarding the OBA.

Texas Eastern Transmission, LP (“Tetco”) began implementing more frequent Operational Flow Orders (“OFOs”) limiting NJNG’s tolerance for under and over deliveries.³ The frequency and length of the OFOs required NJNG to seek to amend the volume parameters of Essential Power’s OBA.

January 2020 Petition

In the January 2020 Petition, the Petitioners sought approval of the First Amendment. The First Amendment incorporated changes to the volume parameters and the equation used to calculate the daily operating balance charge paid by Essential Power under Section B, Article VI, *Operational Balancing Account and Overrun Usage*, of the Original Service Agreement.

The Petitioners asserted that the First Amendment is in the best interest of its customers as it would reduce the operational flexibility provided in the Original Agreement regarding OBA volumes and reduce the risk of NJNG incurring an OFO penalty by Tetco.

Tetco’s tariff provides for OFO penalty revenues to be disbursed to non-offending customers based upon the OFO zone impacted. If the First Amendment is approved, NJNG could reduce the risk of incurring a pipeline OFO penalty from Tetco, limiting the exposure of incurring a possible increase to NJNG’s BGSS customers. NJNG customers would continue to receive benefits from the Original Service Agreement as Essential Power’s revenues are treated as utility operating revenue by NJNG, which reduces charges applicable under all firm tariff rate classes. In addition, NJNG’s BGSS customers would avoid the need to use inventory storage space to manage the over and under deliveries made by Essential Power.

Request for Confidential Treatment

The January 2020 Petition also sought a Protective Order and Exemption from Public Disclosure of Confidential Information pursuant to N.J.S.A. 47:1A-1 et seq. Specifically, the Petitioners requested that the pricing and delivery terms contained in the First Amendment remain confidential as they present financially and/or commercially sensitive information, which if disclosed could cause harm to Essential Power and give an advantage to Essential Power’s competitors. Additionally, according to the Petitioners, this could provide an advantage to similarly situated customers of NJNG when negotiating a similar service agreement.

Rate Counsel Comments

By letter dated June 11, 2020, the New Jersey Division of Rate Counsel (“Rate Counsel”) submitted comments on the January 2020 Petition. In its comments, Rate Counsel indicated that, after a review

³ An OFO is a mechanism to protect the operational integrity of the pipeline. Intrastate pipelines may issue and implement system-wide or customer-specific OFOs in the event of high or low pipeline inventory. OFOs require shippers to take action to balance their supply with their customers’ usage on a daily basis within a specified tolerance band, whereby shippers may deliver additional supply or limit supply deliveries to match usage.

of the January 2020 Petition and discovery responses, it had no objection to the Board's approval of the First Amendment. (Rate Counsel Comments at 2).

Rate Counsel noted that until the January 2020 Petition was filed, the Original Service Agreement had not been amended since it was approved in 2003. Rate Counsel stated in view of the many developments that have occurred in the gas industry and the substantial rate increases that have been implemented for the Company's other ratepayers, the rates being charged to Essential Power may be outdated. Id. Under Article II of the Original Service Agreement, NJNG can give Essential Power the required notice prior to the expiration of the current term and negotiate a modified or new agreement if the rates or other terms and conditions have become unreasonable. Further, in March 2013, NJNG advised the Board that it intended to re-negotiate the Original Service Agreement in the coming year, but to date that has not occurred. Id. at 2 to 3. Accordingly, Rate Counsel recommended that the Board direct the Company to file a petition with the Board for review of the prudence of the Original Service Agreement, or any modified or new agreement, following the expiration of the current term.

DISCUSSION AND FINDINGS

Based upon its review of the record in this matter, including the January 2020 Petition and Rate Counsel's comments, the Board **HEREBY FINDS** the First Amendment reasonable and in the public interest as it may lower the Company's risk of incurring a pipeline OFO penalty and allow for the continuation of Essential Power's revenue contributions to benefit all firm tariff rate classes.

Accordingly, the Board **HEREBY APPROVES** the First Amendment to the Original Service Agreement, attached as Exhibit A, on the effective date of this Order. In approving this matter, the Board emphasizes that this Order is intended to address the facts and circumstances contained in the January 2020 Petition in this Docket and has no precedential effect upon any pending or future proceeding.

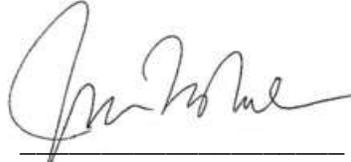
Additionally, there have been numerous developments in the gas industry since 2003, the year the Board approved the Original Service Agreement. In March 2013 NJNG advised the Board they intended to re-negotiate the Original Service Agreement in the coming year, but has yet to do so. To ensure that the rates, terms, and conditions are reasonable and not dated, the Board **DIRECTS** the Company to file a petition for review of the prudence of the Original Service Agreement and the First Amendment, or any modified or new agreement, following the expiration of the current term.

With respect to the request for confidential treatment of certain information that is claimed to be commercially sensitive or proprietary, the Board **FINDS** that this issue should be decided by the Board's Custodian of Records pursuant to the Board's rules, if and when a request for release of such data is made under the Open Public Records Act pursuant to N.J.A.C. 14:1-12.

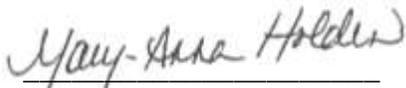
The effective date of this Order is September 19, 2020.

DATED: September 9, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

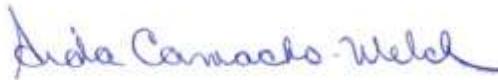


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY AND
ESSENTIAL POWER OPP, LLC FOR APPROVAL OF 1) AN AMENDMENT TO THE SERVICE
AGREEMENT AND 2) A PROTECTIVE ORDER AND EXEMPTION FROM PUBLIC
DISCLOSURE OF CONFIDENTIAL INFORMATION

BPU DOCKET NO. GO20010091

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EXHIBIT A
FIRST AMENDMENT TO
ORIGINAL SERVICE AGREEMENT
REDACTED PUBLIC VERSION

**FIRST AMENDMENT
TO
SERVICE AGREEMENT
FOR SERVICE CLASSIFICATION FT**

This First Amendment ("Amendment") to the Service Agreement for Service Classification FT (the "Agreement"), dated October 28, 2002, by and between New Jersey Natural Gas Company ("NJNG") and Essential Power OPP, LLC ("Customer") and is hereby entered into as of May 10, 2019. NJNG and Customer shall each be referred to as a "Party" and together, the "Parties".

RECITALS

WHEREAS, the Parties have previously entered into the Agreement; and

WHEREAS, the Parties now desire to amend, modify and revise the Agreement;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

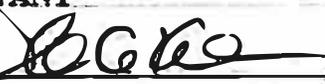
1. **Effect of Amendment.** Other than the specific modifications to the terms of the Agreement set forth in this Amendment, all otherwise unmodified Agreement terms are and shall continue to be deemed to remain in full force and effect. To the extent that there are any conflicts or inconsistencies between this Amendment and the Agreement, the terms and provisions of this Amendment shall govern.
2. **Amendments.**
 - a) Article VI: Nominations, Operational Balance Account and Overrun Usage, B. Operational Balancing Account and Overrun Usage of the Agreement is hereby modified and amended as follows:
 - i. References to " " are hereby deleted and replaced with " ".
 - ii. References to " " are hereby deleted and replaced with " ".
 - iii. References to " " are hereby deleted and replaced with " ".
3. **Miscellaneous.**
 - a) This Amendment may be modified only by a written instrument signed by the Parties.

- b) In the event that any one or more of the provisions of this Amendment shall be determined to be void or unenforceable, by a court of competent jurisdiction, or by law, such determination will not render this Amendment invalid or unenforceable and the remaining provisions hereof shall remain in full force and effect.
- c) This Amendment has been made in and its validity, interpretation, construction and performance shall be governed by and construed in accordance with the laws of the State of New Jersey, without reference to its laws governing conflicts of law. Each party irrevocably accepts and submits to the exclusive jurisdiction of the courts of competent jurisdiction located in Monmouth County, New Jersey.
- d) This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Each person executing this Amendment, by execution hereof, represents and warrants that such person is fully authorized to do so. Signatures to this Amendment transmitted by facsimile, sent by email (including ".pdf"), or delivered by other electronic means shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution original to this Amendment with its actual signature to the other Party upon request, but a failure to do so shall not affect the enforceability of this Amendment, it being expressly agreed that each Party to this Amendment shall be bound by its own facsimile or other electronic signature and shall likewise accept the facsimile or other electronic signature of the other Party.

[Signature page follows]

The parties have executed this Amendment, through their respective officers, duly authorized for such purpose, as they so declare and represent, as of the date first above written.

NEW JERSEY NATURAL GAS
COMPANY

By: 

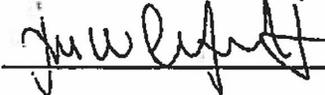
Name: Mark G. Kahrer
Vice President, Regulatory Affairs

Title: _____

ESSENTIAL POWER OPP, LLC

ADG

MAY 08 2019

By: 

Name: James W. Crawford, Jr.
Vice President

Title: _____