



Agenda Date: 5/10/23
Agenda Item: 1A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

AUDITS

IN THE MATTER OF AN AUDIT OF THE AFFILIATED)
TRANSACTIONS BETWEEN NEW JERSEY NATURAL)
GAS COMPANY AND NEW JERSEY RESOURCES)
CORPORATION AND ITS AFFILIATES AND NJNG'S)
COMPLIANCE WITH AFFILIATE RELATIONS AND FAIR)
COMPETITION STANDARDS AND ELECTRIC)
DISCOUNT AND ENERGY COMPETITION ACT AND A)
COMPREHENSIVE MANAGEMENT AUDIT OF NEW)
JERSEY NATURAL GAS COMPANY PURSUANT TO)
N.J.S.A. 48:2-16.4, 48:3-49, 48:3-58 AND N.J.A.C. 14:3-)
12.1 – 14:3-12.4, 14:4-3 ET. SEQ.)

ORDER

DOCKET NO. GA22020074

Parties of Record:

Andrew Dembia, Esq., New Jersey Natural Gas Company
John Antonuk, The Liberty Consulting Group

BY THE BOARD:

At its regular agenda meeting on April 6, 2022, the New Jersey Board of Public Utilities (“Board” or “BPU”) initiated an audit of New Jersey Natural Gas Company (“NJNG”, “Utility”, or “Company”). The Board further authorized Board Staff (“Staff”) to release a Request for Proposal (“RFP”) to six (6) pre-approved management consulting firms inviting bid submissions for a two-phase audit. Phase one was to consist of an audit of affiliated transactions of NJNG and New Jersey Resources, NJNG’s affiliates and any competitive services it offers, and its compliance with the Board’s Affiliate and Fair Competition Standards. Phase two was to consist of a comprehensive management audit (“Management Audit”). The historical period in the RFP was from January 1, 2014 through December 31, 2021.

On September 7, 2022, the Board approved the recommendation of the Evaluation Committee, and selected The Liberty Consulting Group (“Liberty” or “Consultant”) as the consultant to conduct the audit.

By this Order, the Board addresses concerns that Liberty raised with the Contract Manager regarding the responsiveness of NJNG and the Company's interpretation of the scope of work in this audit.¹

BACKGROUND AND PROCEDURAL HISTORY

During the course of issuing discovery requests to NJNG, Liberty requested information and data up through 2022, and certain requests sought forecasted data through 2027.

On or about April 3, 2023, Liberty informally reached out to Staff and raised concerns about NJNG's responses to discovery requests. Liberty stated that NJNG did not provide full and complete responses and declined to answer Liberty's discovery requests that went beyond the end of the historical review period identified in the audit scope, which closed on December 31, 2021.

The Contract Manager, as well as other Staff members, arranged a meeting with NJNG and Liberty to discuss Liberty's concerns on April 11, 2023. Initially, NJNG objected to providing any information beyond December 31, 2021, arguing it was not within the scope of the RFP because the RFP specifically listed the historical review period as between January 1, 2014 through December 31, 2021.² Liberty indicated that in order to fulfill the requirements of the RFP for the audit, they would need responses to the discovery requests as asked. Liberty would otherwise lack the meaningful information necessary to properly compare historical operational processes and data to updated operational processes and data. Liberty believes having this information would allow them to produce a more useful and complete audit report.

Pursuant to its Consultation Agreement with the Board, on April 19, 2023, Liberty provided a more formal letter to the Contract Manager stating their concerns about NJNG's unresponsiveness to data requests. According to Liberty, NJNG routinely denied requests to provide information subsequent to 2021 involving holding company or affiliate activities performed by, for, or affecting NJNG. Liberty further argued that NJNG denied requests for information concerning 26 areas in the scope of work included in the RFP for this engagement, and which Liberty included in its Board-approved workplan to conduct a management and operations and affiliates audit.

Liberty recognizes that the audit period includes a historical period of 2014 through 2021, but states that they cannot address current practices with data and information that is at least 18 months old. Liberty's April 19 also asserted that current and forward looking information was contemplated under the RFP. For instance, Liberty notes that the RFP often asked the auditor to examine what "is" the case, what "does" happen, what are "current" practices in existence, what effect practices "may have," what controls the company "has", the "continued viability" of prior audit recommendations, how costs "are" allocated, and whether costs allocated to NJNG "are" reasonable and appropriate. In other words, when describing the management and operations areas within its scope, the RFP thus uses the present tense to describe the areas to be examined.

¹ Pursuant to the Board's Consultation Agreement with Liberty, the Contract Manager is tasked with settling disputes in the performance of the audit or interpretation of the Consultation Agreement. The Contract Manager may then have the Board review its decision.

² Staff tried to procure a resolution. NJNG offered to answer requests up through the end of calendar year 2022 and respond to already issued supplemental requests seeking forecasted data. However, NJNG stated that any future requests seeking information beyond December 31, 2022, would be addressed on a case by case basis.

Liberty asserts that post-2021 data and events must therefore be within the scope of the RFP. Consequently, Liberty contended that NJNG must provide data from this period to the extent Liberty needs it to assess the Company's current state and practices.

Furthermore, Liberty noted that the RFP repeatedly calls for the auditor to recommend changes. Liberty stated they cannot recommend potentially beneficial improvements (or assess their costs and benefits) going forward without knowing what exists now, and in many cases, what can be expected to exist at least through 2023 and 2024 both with and without change. Liberty argued that, in their 30 years of experience with the BPU, the primary goal of audits has been to secure improvements that benefit customers, the public, and stakeholders in New Jersey.

Liberty's workplan specifically stated that its audit would examine current circumstances, needs, challenges, and opportunities. In its Board-approved bid proposal, Liberty indicated that it continually refines its baseline workplans to reflect changing industry circumstances and to reflect frameworks, requirements, and developments in the jurisdiction(s) under which the utility being examined operates. It also considers the Company's strategy for investments and divestiture versus its allocations of capital for the utility system and its customers with a focus on reviewing any expected significant planned growth in its unregulated businesses. Staff notes that in all previous audit engagements with the Board, Liberty has applied this type of review.

Liberty's letter to the Contract Manager requested that the Board confirm the following expectations and requirements regarding the engagement:

1. The 2014 through 2021 period specified in the RFP is the minimum required period for which NJNG must provide historical data and information relevant to the areas identified in the RFP, but the Contract Manager has discretion to permit adjustments where appropriate in light of burdens in providing aspects of that information for certain portions of the historical period.
2. The historical period does not in any way present a bar to inquiring about or expecting full, complete and timely responses to reasonable and appropriate requests for information relating to periods following the period's end date.
3. The RFP's description of the scope set forth in RFP parts 3.0, 3.1, and 3.2 includes, in all cases, an examination of matters and information as existing in the year of field work performance (here expected to include calendar year 2023, absent unforeseen delay in work performance); and that the RFP requires NJNG to provide full, complete, and timely responses to information and interview questions, including budgeted and forecasted data through this period.
4. Where Liberty identifies a need for estimated, projected, or forecasted information for longer periods to address the costs and benefits of potential recommendations or to examine longer term plans or budgets as contemplated by the RFP, NJNG shall provide it, subject to BPU Contract Manager's review and determination on matters to which the company raises an objection.

The Contract Manager and Staff have reviewed Liberty's requests and finds them to be reasonable and consistent with past practice. Audit recommendations that may include future improvements based upon an historical period only, while failing to consider known recent or planned management and operational modifications may result in stale advice. Thus, incorporating some knowledge of current and future company outlooks may lead to more

appropriate recommendations. The goal of an audit is to provide beneficial recommendations that are based upon relevant findings and sound conclusions so that the Board can render a decision that is appropriate and constructive to utility management, while recognizing that planning and forecasts evolve and are at times malleable. Staff believes that it is reasonable to expect Liberty to ask questions that relate to the subject areas within the RFP's scope, and the identified historical period was not intended to bound the audit from current and forecasted information. Therefore, the Scope includes asking for historical, current and projected information so that the auditors can consider recent operational changes to the greatest extent possible when formulating their recommendations.

DISCUSSION AND FINDINGS

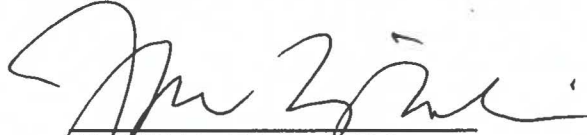
A full and complete audit that includes current and projected information is within the RFP's intended scope, is consistent with past practice, and leads to more relevant findings, conclusions, and recommendations for improvements in managing the operational functions of any utility. A management and affiliate audit is not only a prudence review of past utility practices and operations, but also a review of current practices and operations, including strategic planning to address known changes occurring in the industry and projections that impact the utility's various functional areas and affiliate relationships. This allows the auditor to make recommendations that can result in meaningful improvements.

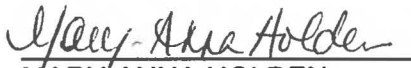
The Board has reviewed Liberty's letter and the recommendations of Staff and **CLARIFIES** that the RFP's scope includes the review of current and forecasted information. The Board **HEREBY DIRECTS** NJNG to provide full and complete responses to all reasonable and appropriate current and future discovery requests by The Liberty Consulting Group, subject to the Contract Manager review process discussed above.

This Order is effective immediately.

DATED: May 10, 2023

BOARD OF PUBLIC UTILITIES
BY:



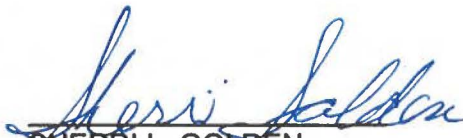
JOSEPH L. FIORDALISO
PRESIDENT

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST:



SHERRI L. GOLDEN
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 AUDIT OF THE AFFILIATED TRANSACTIONS BETWEEN NEW JERSEY NATURAL GAS COMPANY AND ITS AFFILIATES AND A COMPREHENSIVE MANAGEMENT AUDIT OF NEW JERSEY NATURAL GAS COMPANY PURSUANT TO N.J.S.A. 48:2-16.4, 48:3-49, 48:3-58 AND N.J.A.C. 14:3-12.1 – 14:3-12.4, 14:4-3 ET. SEQ.

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