
IN THE MATTER OF THE	:	SUPERIOR COURT OF NEW JERSEY
PETITION OF NEW JERSEY	:	APPELLATE DIVISION
NATURAL GAS COMPANY	:	DOCKET NO. A-001582-22T2
FOR A DETERMINATION	:	
CONCERNING THE	:	Civil Action
HOLMDEL REGULATOR	:	
STATION PURSUANT TO	:	On appeal from final action of the
N.J.S.A. 40:55D-19 -- 2017	:	New Jersey Board of Public Utilities
PETITION AND IN THE	:	in BPU Dockets GO17010023 and
MATTER OF THE PETITION	:	GO18111257
OF NEW JERSEY NATURAL	:	
GAS COMPANY FOR A	:	
DETERMINATION	:	
CONCERNING THE	:	
HOLMDEL REGULATOR	:	
STATION PURSUANT TO	:	
N.J.S.A. 40:55D-19 -- 2018	:	
PETITION	:	

INITIAL BRIEF

OF APPELLANT, TOWNSHIP OF HOLMDEL

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Dated: June 13, 2023

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Holm-86: NJNG response to discovery request HOLM-NJNG-PNL-84, on how NJNG representatives learn about available products (SOICR p. 12) H616a

Holm-87: NJNG response to discovery request HOLM-NJNG-PNL-85, NJNG did consider a catalytic converter for the project; partly objected to request (SOICR p. 12). H617a

Holm-88: NJNG response to discovery request HOLM-NJNG-PNL-86, providing the ignition temperature for the CWT unit proposed and for catalytic heaters discussed in testimony (SOICR p. 12) H619a

Holm-89: NJNG response to discovery request HOLM-NJNG-PNL-87, that proposed CWT heater uses technology that results in increased thermal efficiency (SOICR p. 12) H620a

Holm-90: NJNG response to discovery request HOLM-NJNG-PNL-88, that freezing at Temporary Regulator due to ambient air temperature (SOICR p. 12) H621a

Holm-91: NJNG response to discovery request HOLM-NJNG-PNL-89, of measures taken to avoid water vapor in transmitted gas (SOICR p. 12) H622a

Holm-92: NJNG response to discovery request HOLM-NJNG-PNL-90, identifying the maker of the regulator to be installed (SOICR p. 12) ... H623a

Holm-93: NJNG response to discovery request HOLM-NJNG-PNL-91 described NJNG’s previous experience with catalytic heaters at regulator stations (SOICR p. 12). H624a

Holm-94: NJNG response to discovery request HOLM-NJNG-PNL-92 with objection, why NJNG no longer uses catalytic heaters (SOICR p. 12) H626a

Holm-95 NJNG response to discovery request HOLM-NJNG-PNL-93, objected to providing data about regulator stations constructed since 2000 (SOICR p. 12) H627a

Holm-96: NJNG response to discovery request HOLM-NJNG-PNL-94, objected to describing measures NJNG took to comply with 80% reduction in greenhouse gas emissions by 2050 (SOICR p. 12) H628a

Holm-97: NJNG response to discovery request HOLM-NJNG-PNL-95, objected to describing how NJNG will voluntarily reduce operational emissions in NJ by 50% by 2030 (SOICR p. 12) H629a

Holm-98: NJNG response to discovery request HOLM-NJNG-PNL-96, objected to stating NJNG’s planned reductions in gas sales or throughput annually from 2020 through 2050 (SOICR p. 12) H630a

Holm-99: NJNG response to discovery request HOLM-NJNG-PNL-97, objected to stating NJNG’s planned reductions in gas sales or throughput annually from 2020 through 2050 for customers of the Transmission Line (SOICR p. 12) H631a

Holm-100: NJNG response to discovery request HOLM-NJNG-PNL-98, objected to stating NJNG’s planned reductions in gas sales or throughput annually from 2020 to 2050 for Holmdel (SOICR p. 12) . . . H632a

Holm-101: NJNG response to discovery request HOLM-NJNG-PNL-99, objected to providing NJNG’s plan for gas sales 2012 to 2030 (SOICR p. 12) H633a

Holm-102: NJNG response to discovery request HOLM-NJNG-PNL-100, objected to providing NJNG’s gas sales and throughput for Holmdel customers (SOICR p. 12) H634a

Holm-103: NJNG response to discovery request HOLM-NJNG-PNL-101, objected to providing documents and other data on the requirement for the 2012 Transmission Line (SOICR p. 12) H635a

Holm-104: NJNG response to discovery request HOLM-NJNG-PNL-102, objected to providing the expected useful life of the Transmission Line (SOICR p. 12) H636a

Holm-105: NJNG response to discovery request HOLM-NJNG-PNL-103 objected to providing the expected useful life of the Distribution Line (SOICR p. 12) H637a

Holm-106: NJNG response to discovery request HOLM-NJNG-PNL-104, objected to stating the depreciation treatment of the Transmission Line (SOICR p. 12) H638a

Holm-107: NJNG response to discovery request HOLM-NJNG-PNL-105,
objected to disavowing stranded cost recovery of the Transmission
Line (SOICR p. 12)..... H639a

Holm-108: NJNG response to discovery request HOLM-NJNG-PNL-106
objected to disavowing stranded cost recovery of the Distribution
Line (SOICR p. 12)..... H640a

Holm-109: NJNG response to discovery request HOLM-NJNG-PNL-107,
objected to disavowing stranded cost recovery of the Regulator
Station (SOICR p. 12)..... H641a

Holm-110: NJNG response to discovery request HOLM-NJNG-PNL-108,
objected to explaining why NJNG did not notify of need for regulator
station when NJNG applied to county for Transmission Line
approval (SOICR p. 12) H642a

Holm-111: NJNG response to discovery request HOLM-NJNG-PNL-109
objected to discussing using eminent domain to acquire Cornerstone
property and likely approval (SOICR p. 12) H643a

Holm-112: NJNG response to discovery request HOLM-NJNG-PNL-110
objected to discussing using eminent domain to acquire Vonage
property and likely approval (SOICR p. 12) H644a

Holm-113: NJNG response to discovery request HOLM-NJNG-PNL-111
objected to discussing factors BPU might consider in denying
eminent domain for Vonage or Cornerstone (SOICR p. 12)..... H645a

Holm-114: NJNG response to discovery request HOLM-NJNG-PNL-112
objected to providing any document on consideration of using
eminent domain for this project (SOICR p. 12)..... H646a

Holm-115: NJNG response to discovery request HOLM-NJNG-PNL-117
objected to stating if NJNG has used eminent domain since
2000 (SOICR p. 12) H647a

Holm-116: NJNG response to discovery request HOLM-NJNG-PNL-118
objected to providing copies of communications with owner of
Vonage property (SOICR p. 12) H648a

Holm-117: NJNG response to discovery request HOLM-NJNG-PNL-122 objected to explaining why NJNG does not use capacity restraints to impact reliability (SOICR p. 12) H649a

Holm-118: NJNG response to discovery request HOLM-NJNG-PNL-123 objected to performing hydraulic analyses of distribution system as if temporary regulator will not be replaced (SOICR p. 12) H650a

Holm-119: NJNG response to discovery request HOLM-NJNG-PNL-124 objected to providing hydraulic analyses of the system done as part of analysis and design of the Transmission Line (SOICR p. 12) H651a

Holm-120: NJNG response to discovery request HOLM-NJNG-PNL-125 that there are no hydraulic analyses of the system done as part of the analysis and design of the Regulator Station (SOICR p. 12) H652a

Holm-123: NJNG response to discovery request HOLM-NJNG-OTT-126, objected to providing copies of reports and testimony in other proceedings without a court order (SOICR p. 12) H653a

Holm-124: NJNG response to discovery request HOLM-NJNG-OTT-127, that he did not consult any textbooks or literature to prepare his testimony (SOICR p. 12) H654a

Holm-125: NJNG response to discovery request HOLM-NJNG-OTT-128, that he did not review any BPU orders or reports to prepare his testimony (SOICR p. 12) H655a

Holm-126: NJNG response to discovery request HOLM-NJNG-OTT-129, that he is not an expert on regulator stations (SOICR p. 12) H656a

Holm-127: NJNG response to discovery request HOLM-NJNG-OTT-135, describing “stigma” in real estate valuation (SOICR p. 12). H657a

Holm-128: NJNG response to discovery request HOLM-NJNG-OTT-136, that no facts or market evidence suggests the regulator can be a source of stigma (SOICR p. 12). H658a

Holm-129: NJNG response to discovery request HOLM-NJNG-OTT-137, that no facts or market evidence suggests a regulator can be a source of stigma (SOICR p. 12). H659a

Holm-130: NJNG response to discovery request HOLM-NJNG-OTT-138: objected that circumstances where off-site factors disclosed to purchasers is legal in nature and outside Otteau’s area of expertise (SOICR p. 12) H660a

Holm-131: NJNG response to discovery request HOLM-NJNG-OTT-139, listed regulator stations inspected and indicated none are a source of stigma (SOICR p. 12)..... H661a

Holm-132: NJNG response to discovery request HOLM-NJNG-OTT-140, was objected and did not state whether the regulators existence was a factor to be disclosed to buyers (SOICR p. 12) H662a

Holm-133: NJNG response to discovery request HOLM-NJNG-OTT-141, was objected to and stated disclosure to buyers is a legal question (SOICR p. 12) H663a

Holm-134: NJNG response to discovery request HOLM-NJNG-OTT-142, described the basis for his matched pairs analysis, attaching (SOICR p. 12) H664a

Attached chart of regulators not used in analysis H665a

Holm-135: NJNG response to discovery request HOLM-NJNG-OTT-143, that Mr. Otteau selected the stations in the analysis (SOICR p. 12) H666a

Holm-136: NJNG response to discovery request HOLM-NJNG-OTT-144, that Mr. Otteau performed other analyses and provided List of Outlier Sales Pairings (SOICR p. 12) H667a

Holm-137: NJNG response to discovery request HOLM-NJNG-OTT-146, that Mr. Otteau requested and obtained a list of all regulator stations constructed for periods of time (SOICR p. 12) H668a

Holm-138: NJNG response to discovery request HOLM-NJNG-OTT-147, objected to disclosing whether matched pairs analyses were conducted for repeat sales (SOICR p. 12) H669a

Holm-139: NJNG response to discovery request HOLM-NJNG-OTT-148, objected to disclosing matched pairs analyses prepared for court or regulatory proceedings (SOICR p. 12) H670a

Holm-140: NJNG response to discovery request HOLM-NJNG-OTT-149, disputed that analyses of repeat sales require adjustment (SOICR p. 12) H671a

Holm-141: NJNG response to discovery request HOLM-NJNG-OTT-150, objected to providing copies of reports or appraisals for municipal clients (SOICR p. 12) H672a

Holm-142: NJNG response to discovery request HOLM-NJNG-OTT-151, objected to providing copies of previous appraisals, etc., for NJNG (SOICR p. 12) H673a

Holm-143: NJNG response to discovery request HOLM-NJNG-OTT-152, that Mr. Otteau prepared matched pairs analyses used in other proceedings and refused to provide copies, data (SOICR p. 12) H674a

Holm-144: NJNG response to discovery request HOLM-NJNG-OTT-153, that Mr. Otteau has no opinion on the validity or reliability of the study for INGAA (SOICR p. 12)..... H675a

Holm-145 NJNG response to discovery request HOLM-NJNG-OTT-154, referred to response to Holm-141 (SOICR p. 12) H676a

Holm-146: NJNG response to discovery request HOLM-NJNG-OTT-155, referred to response to Holm-142 (SOICR p. 12) H677a

Holm-147: NJNG response to discovery request HOLM-NJNG-OTT-156, for copies of reports to NJNG and other N.J. utilities, referred to response to Holm-123, objected to (SOICR p. 12) H678a

Holm-148: Excerpts from The Appraisal of Real Estate, 14th ed., by the Appraisal Institute (SOICR p. 12)..... H679a

Holm-149: NJNG response to discovery request HOLM-NJNG-NCF-157, that Ms. Cofone is qualified as an expert and referred to her rebuttal testimony and CV attached to that (SOICR p. 12) H684a

Holm-150: NJNG response to discovery request HOLM-NJNG-NCF-160, identified documents and materials reviewed for her testimony to the Zoning Board, attaching (SOICR p. 12) H685a

Attachment A: Copy of In re Jersey Central Power & Light Company,
Appellate Division decided February 10, 2011, 2011WL 446046 . . . H687a

Holm-151: NJNG response to discovery request HOLM-NJNG-NCF-164, objects to and states she has not testified previously in support of zoning application for natural gas facility (SOICR p. 12) H693a

Holm-152: NJNG response to discovery request HOLM-NJNG-NCF-166: Ms. Cofone would submit a report to a zoning matter if required by municipality and Holmdel did not require such (SOICR p. 12) H694a

Holm-153: NJNG response to discovery request HOLM-NJNG-POT-168, stating Mr. Potenta is an expert and his cv is attached to his rebuttal testimony (SOICR p. 12) H695a

Holm-154: NJNG response to discovery request HOLM-NJNG-POT-169, listed his cv education and background (SOICR p. 12) H696a

Holm-155: NJNG response to discovery request HOLM-NJNG-POT-170, listed the materials supplied to and reviewed for his testimony (SOICR p. 12) H697a

Holm-156: NJNG response to discovery request HOLM-NJNG-POT-171, that Mr. Potenta reviewed no BPU reports or orders (SOICR p. 12) H698a

Holm-157: NJNG response to discovery request HOLM-NJNG-POT-172, referred to the response to Holm-155 about materials reviewed before his testimony to the Zoning Board (SOICR p. 12) H699a

Holm-158: NJNG response to discovery request HOLM-NJNG-POT-173, that no person assisted his preparation of his testimony (SOICR p. 12) H700a

Holm-159: NJNG response to discovery request HOLM-NJNG-POT-174, that he is an expert on the air and noise emissions of the proposed regulator station (SOICR p. 12) H701a

Holm-160: NJNG response to discovery request HOLM-NJNG-POT-175, referred to the responses to HOLM-NJNG-POT-168 and 169 [Holm-153 and Holm-154] on his testimony in other court and regulatory proceedings (SOICR p. 12) H702a

Holm-161: NJNG response to discovery request HOLM-NJNG-POT-176, stated that all printed matter consulted were in the Air and Noise Report attached to his testimony (see attachments EJP-2 and EJP-3) (SOICR p. 12) H703a

Holm-162: NJNG response to discovery request HOLM-NJNG-POT-177, referred to the response HOLM-NJNG-POT-175 [Holm-153 and Holm-154] on his address to environmental impact reports for a natural gas facility (SOICR p. 12)..... H704a

Holm-163: NJNG response to discovery request HOLM-NJNG-POT-178, objected to identifying, etc., court or regulatory proceedings in which he submitted an environmental impact report (SOICR p. 12) H705a

Holm-164: NJNG response to discovery request HOLM-NJNG-POT-179, objected to disclosing whether any of his environmental impact reports were adverse to a proposed or existing public utility facility (SOICR p. 12) H706a

Holm-165: NJNG response to discovery request HOLM-NJNG-POT-180, objected to indicating how testimony before the Zoning Board may differ from that supplied to the OAL (SOICR p. 12)..... H707a

Holm-166: NJNG response to discovery request HOLM-NJNG-CH-181, that Mr. Chilton seeks qualification as a expert on N.J. energy and utility regulation and policy; see response to HOLM-NJNG-CH-186 for his cv and to his testimony (SOICR p. 12).. H708a

Holm-167: NJNG response to discovery request HOLM-NJNG-CH-182, to see response to Holm-166 if he contents to be expert at interpreting the New Jersey EMP (SOICR p. 12) H709a

Holm-168: NJNG response to discovery request HOLM-NJNG-CH-183, that his expertise on the proposed regulator station is in his testimony and referred to his experience at the BPU (SOICR p. 12) H710a

Holm-169: NJNG response to discovery request HOLM-NJNG-CH-184, states he is not an environmental expert, but has expertise in N.J. energy utility regulation and policy and rebuts contention that Executive Order 100 prohibits approval of the proposed regulator station (SOICR p. 12)..... H711a

Holm-170: NJNG response to discovery request HOLM-NJNG-CH-185, that Mr. Chilton is solely responsible for his testimony, but did consult with Gabel and Gabel-Frank (SOICR p. 12) H712a

Holm-171: NJNG response to discovery request HOLM-NJNG-CH-186, attached his cv as Attachment A (SOICR p. 12) H713a

 Attachment A: Robert S. Chilton background statement H714a

Holm-172: NJNG response to discovery request HOLM-NJNG-CH-187, listed the materials used in preparing his testimony (SOICR p. 12) H716a

Holm-173: NJNG response to discovery request HOLM-NJNG-CH-188, states there are no workpapers (SOICR p. 12). H717a

Holm-174: NJNG response to discovery request HOLM-NJNG-CH-189, states that only the 2019 EMP and prior energy master plans and the materials listed in Holm-172 were consulted from BPU reports and orders (SOICR p. 12) H718a

Holm-175: NJNG response to discovery request HOLM-NJNG-CH-190, states that items listed in the rebuttal testimony are either public or in Holmdel counsel’s possession and see Holm-172 (SOICR p. 12). H719a

Holm-176: NJNG response to discovery request HOLM-NJNG-CH-191, declines to specify pages in reference in the Energy Master Plan (SOICR p. 12) H720a

Holm-177: NJNG response to discovery request HOLM-NJNG-CH-192, objects and states Mr. Chilton had no involvement in the development of the EMP (SOICR p. 12) H721a

Holm-178: NJNG response to discovery request HOLM-NJNG-CH-193, objects to identifying testimony or comments made which were adverse to a natural gas company (SOICR p. 12). H722a

Holm-178A: NJNG response to discovery request HOLM-NJNG-CH-193, was revised to include his objection and also to attach previous testimony (SOICR p. 12) H723a

Attachment A: Testimony of Robert Chilton on behalf of the IEPNJ
in the PSE&G 2009 Rate Case, with cv as of 2009 H724a

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Pages H751a through H907a

Holm-179: NJNG response to discovery request HOLM-NJNG-CH-
194, objects to identifying if he took a position in support of a
municipality and adverse to a utility (SOICR p. 12) H751a

Holm-179A: NJNG response to discovery request HOLM-NJNG-CH-
194, was revised to state he does not recall testimony adverse to a
utility and favoring the municipality among consultations
(SOICR p. 12) H752a

Holm-180: NJNG response to discovery request HOLM-NJNG-CH-
195, objects to providing the nature of the involvement of Gabel
Associates in the EMP (SOICR p. 12) H753a

Holm-181: NJNG response to discovery request HOLM-NJNG-CH-
196, objects to identifying where Gabel Associates took a
position adverse to a utility (SOICR p. 12) H754a

Holm-182: NJNG response to discovery request HOLM-NJNG-CH-
197, objects to identifying proceedings in which Gabel
Associates took a position in support of a municipality
(SOICR p. 12) H755a

Holm-183: NJNG response to discovery request HOLM-NJNG-CH-
198, objects to providing details on where the EMP Plan contemplates
a “gradual reduction” in natural gas consumption, adding at
pages 14-17 the EMP anticipates a slower reduction in the early
years and larger reductions in later years (SOICR p. 12) H756a

Holm-184: NJNG response to discovery request HOLM-NJNG-CH-
199, objects as beyond the scope of this proceeding whether Mr.
Chilton thinks the objective of achieving a 75% reduction in
natural gas consumption by 2050 is achievable (SOICR p. 12) H757a

Holm-185: NJNG response to discovery request HOLM-NJNG-CH-
200, objects as beyond the scope of this proceeding to answering
if he thinks NJNG can achieve a 75% reduction by 2050
(SOICR p. 12) H758a

Holm-186: NJNG response to discovery request HOLM-NJNG-CH-201, objects as beyond the scope of this proceeding to answering if he thinks New Jersey can achieve some reduction for 2020, 2021 (SOICR p. 12) H759a

Holm-187: NJNG response to discovery request HOLM-NJNG-CH-202, objects as beyond scope of this proceeding to answer if he thinks NJNG can achieve some reduction for 2020, 2021 (SOICR p. 12) H760a

Holm-188: NJNG response to discovery request HOLM-NJNG-CH-203, objects as beyond the scope of this proceeding to Mr. Chilton’s providing his best estimation of how NJNG can comply with the EMP’s objective of a 75% reduction in natural gas consumption by 2050 (SOICR p. 12) H761a

Holm-189: NJNG response to discovery request HOLM-NJNG-CH-204, objects as beyond the scope of this proceeding to providing Mr. Chilton’s definition of stranded cost and providing the BPU’s definition and how BPU allowed utilities to recover stranded costs in rates (SOICR p. 12) H762a

Holm-190: NJNG response to discovery request HOLM-NJNG-CH-205, objects to asking Mr. Chilton to state categorically that the regulator station will never be a candidate for stranded cost recovery (SOICR p. 12) H763a

Holm-191: NJNG response to discovery request HOLM-NJNG-CH-206, objects as it calls for a legal conclusion, whether NJNG has any discretion to ignore the goals and mandates of the EMP (SOICR p. 12) H764a

Holm-192: NJNG response to discovery request HOLM-NJNG-CH-209, refers to Holm-191, as to whether NJNG has any discretion to ignore the EMP’s objective of achieving a 75% reduction in natural gas consumption by 2050 (SOICR p. 12) H765a

Holm-193: NJNG response to discovery request HOLM-NJNG-CH-208, refers to Holm-191, as to whether Mr. Chilton has a opinion as to whether NJNG has any discretion to ignore the EMP’s objective of achieving a 75% reduction in natural gas consumption by 2050 (SOICR p. 12) H766a

Holm-194: NJNG response to discovery request HOLM-NJNG-CH-209, refers to Holm-191, as to whether Mr. Chilton has a opinion as to whether the EMP applies to this proceeding (SOICR p. 12) H767a

Holm-195: NJNG response to discovery request HOLM-NJNG-CH-210, strenuously objects, as beyond the scope of this proceeding, calling for a legal conclusion, etc, if Mr. Chilton can provide any example where a public utility was permitted to ignore or disregard the policies and mandates of a previous energy master plan (SOICR p. 12) H768a

The New Jersey Natural Gas Company’s (“NJNG”) Exhibits filed in OAL Dockets PUC 01160-17 and PUC 17810-18 beginning October 19, 2020, as listed in the Appendix to the Decision and Order issued by Hon. Elia A. Pelios, A.L.J., May 18, 2022 (SOICR #93):

The following NJNG Exhibits have been omitted from this Appendix as they were not considered in the Initial Decision of the Hon. Elia A. Pelios, A.L.J., nor by the BPU in its Decision and Order which is the subject of this appeal:

- P-1o Kraig Sanders, Direct Testimony (970 Holmdel Road)
- P-2o Marc Panaccione, Direct Testimony (970 Holmdel Road)
- P-5o Transcript of Holmdel Zoning Board of Adjustment, final vote (December 7, 2016) (excerpted pages) (970 Holmdel Road)

P-1: Kraig Sanders, Direct Testimony (960 Holmdel Road) (SOICR p. 10) H769a

P-2: Marc Panaccione, Direct Testimony (960 Holmdel Road) (SOICR p. 10) H779a

P-3: Map of Holmdel identifying location of transmission line as well as Zoning and environmental restrictions (960 Holmdel Road) (SOICR p. 10) H794a

P-3o: Map of Holmdel identifying location of transmission line as well as Zoning and environmental restrictions (970 Holmdel Road) (SOICR p. 10) H795a

P-4: Overall Plan and Site Plan and Grading Plan (960 Holmdel Road) (SOICR p. 10) H796a

P-4o: Facility Site Plan (970 Holmdel Road) (SOICR p. 10) H798a

P-5: Site Plan with Landscaping (960 Holmdel Road) (SOICR p. 10) . . H799a

P-6: Transcript of Holmdel Zoning Board of Adjustment, final vote (October 25, 2018) (excerpted pages) (960 Holmdel Road) (SOICR p. 10) has not been included in the Appendix; the transcript has been filed separately

P-7: Cover letter of public hearing exhibit (including proof of publications, and mailing of notice to municipal and county clerks/executives) (SOICR p. 10) H800a

 Published Notice to the Residents of Holmdel H801a

 Dembia Affidavit of Notice H802a

 Asbury Park Press Proof of Insertion 1/17/2020 H803a

 Notice print out January 17, 2020, Asbury Park Press H804a

 Morristown Daily Record Proof of Insertion Jan. 28, 2020 H805a

 Notice print out January 17, 2020, Daily Record H806a

P-8: Company Panel (Sanders, Panaccione, and Wyckoff), Rebuttal Testimony (SOICR p. 10). H807a

 Attachment SPW-1, photograph H842a

 Attachment SPW-2, proposed plantings buffer H843a

 Attachment SPW-3, photograph H844a

 Attachment SPW-4, six views:

 Viewpoint 01 - Holmdel Road South, Looking Southwest, Existing View H846a

 Viewpoint 01 - Holmdel Road South, Looking Southwest - Proposed View (vegetation depicts as planted heights) H847a

 Viewpoint 01 - Holmdel Road South, Looking Southwest -Proposed View (vegetation depicts two years after planted heights). H848a

Viewpoint 02 - Holmdel Road North, Looking Southwest - Existing View	H849a
Viewpoint 02 - Holmdel Road North, Looking Southwest - (vegetation depicts as planted heights).....	H850a
Viewpoint 02 - Holmdel Road North, Looking Southwest - (vegetation depicts two years after planted heights).....	H851a
Attachment SPW-5, NJNG response to RC discovery request RCR-ENG-12: projected installed cost of the proposed regulator station .	H852a
Attachment SPW-6, Holmdel response by Mosley to NJNG-HOLM-BLM-23: responsibilities a company has to the community	H853a
P-9: Christine Nazarro-Cofone, City Planning Rebuttal Testimony (SOICR p. 10)	H854a
Attachment CC-1, Cofone cv.....	H863a
Attachment CC-2, Holmdel Development Regulations, excerpts	H865a
Attachment CC-3, Draft Holmdel Master Plan Reexamination, June 2010, excerpts	H878a
Attachment CC-4, Holmdel Zoning Board Resolution SP 96-12 re NYSMSA Communications Tower, adopted July 9, 1997.....	H895a
Township of Holmdel, Appellant's Appendix Vol. 7 Pages H908a through H1058a	
Attachment CC-5, Holmdel Zoning Board Resolution granting Metro PCS New York LLC variance, July 10, 2009	H908a
P-10: Robert S. Chilton, EMP Rebuttal Testimony (SOICR p. 10).....	H920a
P-11: Edward J. Potenta, Air Quality and Noise Impact Rebuttal Testimony (SOICR p. 10).....	H941a
Attachment EJP-1, Potenta cv	H957a

Attachment EJP-2, Potenta Noise Impact Assessment dated May 10, 2018. H962a

Attachment EJP-3, Potenta Air Quality Study dated May 10, 2018, with attachments H1007a

Attachment EJP-4, Executive Order No. 100 issued by Gov. Murphy January 27, 2020 H1025a

Attachment EJP-5, Reducing CO₂ Emissions, issued by NJDEP February 25, 2020, cover plus one page, excerpt H1032a

P-11A: Errata to Rebuttal Testimony of Potenta (SOICR p. 11). H1034a

P-12: Jeffrey Otteau, Real Estate Valuation Rebuttal Testimony (SOICR p. 11) H1035a

Attachment: Otteau Curriculum Vitae H1046a

Attachment JO1: Otteau Market Study Report submitted to NJNG September 12, 2018, is included in this Appendix at pages Ha375 tot Ha401.

Attachment JO2: Otteau letter to NJNG October 17, 2018 submitting analytics for paired sales analysis requested by ZB . . . H1048a

P-13: Cover letter enclosing Holmdel responses to NJNG data requests NJNG-HOLM-BLM-1 to -30 (see also S-16) (SOICR p. 11) is part of Staff Exhibit 16 and is included in this Appendix at Ha1709 to Ha1729.

P-14 to -25: Holmdel response to discovery request NJNG-HOLM-BLM-2 to 5, 9 to 13, 15, 17, and 20 dated March 31, 2020 (see also S-16) (SOICR p. 11) is Staff Exhibit S-16 and included in this Appendix at Ha1709 to Ha1729.

P-15: Holmdel response to discovery request NJNG-HOLM-BLM-3 (SOICR p. 11) is included in this Appendix at Ha1712.

P-26: Cover letter and Holmdel responses to NJNG discovery requests NJNG-HOLM-DM-1 to 29 (SOICR p. 11) is included in this Appendix at Staff Exhibit S-17 at Ha1730 to Ha1743.

P-28: Cover letter and Holmdel responses to NJNG discovery requests NJNG-HOLM-PS-1 to 13 (see also S-17)(SOICR p. 11) are in this Appendix as Staff Exhibit S-18 and included at pages Ha1744 to Ha1753.

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P-29: Cover letter and Holmdel supplemental responses to NJNG discovery requests NJNG-HOLM-PS-11 to 13 (SOICR p. 11) H1059a

P-30: Excerpted pages from the Recreation Needs Assessment by T&M Associates, March 13, 2018 (SOICR p. 11) H1066a

Attachment: Final Report, “Holmdel Township Parks and Recreation Needs Assessment,” by ETC Institute, dated March 13, 2018, excerpt. H1080a

The New Jersey Division of Rate Counsel’s (“RC”) Exhibits filed in OAL Dockets PUC 01160-17 and PUC 17810-18 beginning October 19, 2020, as listed in the Appendix to the Decision and Order issued by Hon. Elia A. Pelios, A.L.J., May 18, 2022 (SOICR #93):

RC-1: Cover letter dated March 9, 2017 and NJNG responses to discovery requests RCR-ENG-1, -2, -5 to -9 (BPU Docket. No. GO17010023) (SOICR p. 12) (Staff also listed these as S-1): H1086a

NJNG response to RCR-ENG-1 H1089a

NJNG response to RCR-ENG-2 H1090a

NJNG response to RCR-ENG-5 H1091a

NJNG response to RCR-ENG-6 H1092a

NJNG response to RCR-ENG-7 H1093a

NJNG response to RCR-ENG-8 H1094a

Attachment: “Pipeline Impact to Property Value and Property Insurability,” by The INGAA Foundation, 2016 H1097a

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Attachment to RCR-ENG-8: “Pipeline Impact to Property Value and Property Insurability,” by The INGAA Foundation, 2016, pages Ha1210 to Ha1241

NJNG response to RCR-ENG-9	H1242a
NJNG Cover letter dated March 24, 2017, enclosing the attachment to NJNG response to RCR-ENG-5	H1243a
Attachment: NJNG response to RCR-ENG-5	H1247a
Attachment: Map showing locations of pipelines	H1248a
RC-2: NJNG Cover letter dated March 16, 2017 and NJNG responses to discovery requests RCR-ENG-3, -4, and -10 (BPU Docket. No. GO17010023) (SOICR p. 13) (Staff also listed these as S-2):	H1249a
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NJNG response to RCR-ENG-4	H1254a
NJNG response to RCR-ENG-10	H1255a
RC-3: Cover letter dated April 12, 2017 and NJNG responses to discovery requests RCR-ENG-11 to -14 (BPU Docket. No. GO17010023) (SOICR p. 13) (Staff also listed these as S-3):	H1256a
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Exhibit A-8: Cross Section Display with fence	H1265a
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Existing Conditions Plan	H1270a
Site & Grading Plan	H1271a
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Landscaping Plan Details.	H1274a
Landscaping Plan Profile & Details	H1275a
NJNG response to RCR-ENG-12	H1276a
Letter by Crest Engineering March 30, 2017, to NJNG discussing guardrails	H1278a
NJNG response to RCR-ENG-13	H1279a
NJNG response to RCR-ENG-14	H1280a
RC-4: Cover letter dated April 21, 2017 and NJNG responses to discovery requests RCR-ENG-15 to -17 (BPU Docket. No. GO17010023) (SOICR p. 13) (Staff also listed these as S-4):	H1281a
NJNG response to RCR-ENG-15	H1285a
NJNG response to RCR-ENG-16	H1286a
NJNG response to RCR-ENG-17	H1287a
RC-5: Cover letter dated May 18, 2017 and NJNG responses to discovery requests RCR-ENG-18 and -19 (BPU Docket. No. GO17010023) (SOICR p. 13) (Staff also listed these as S-5):	H1288a
NJNG response to RCR-ENG-18	H1292a
NJNG response to RCR-ENG-19	H1293a

RC-6: Cover letters and NJNG responses to discovery requests
RCR-ENG-1 to -14 (BPU Docket. No. GO18111257) (SOICR p. 13)
(Staff also listed these as S-6): H1294a

 NJNG response to RCR-ENG-1 (2018) H1297a

 Attachments: Site Plan, Cover Sheet H1298a

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 Overall Plan H1300a

 Site Plan & Grading Plan H1301a

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 NJNG response to RCR-ENG-2 (2018) H1305a

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 Attachment: NJNG response to RCR-ENG-18 in BPU
 Docket No. GO17010023 H1307a

 NJNG response to RCR-ENG-4 (2018) H1308a

 NJNG response to RCR-ENG-5 (2018) H1309a

 NJNG response to RCR-ENG-6 (2018) H1310a

 NJNG response to RCR-ENG-7 (2018) H1312a

 Letter from Holmdel’s Coscia requesting NJNG’s
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 Holmdel’s Engineering Report by Ploussas dated
 March 26, 2018 H1315a

 Letter from Holmdel’s Coscia forwarding Ploussas’
 Correction to his report March 28, 2018 H1322a

Holmdel’s Engineering Report correction by Ploussas dated March 28, 2018 H1323a

Letter from Holmdel’s Coscia forwarding Ploussas’ preliminary letter on environmental impacts dated April 9, 2018 H1325a

Email from NJNG May 10, 2018 to Holmdel’s Coscia of submission of the Potential Air Quality Study and attachments May 10, 2018 H1327a

Potentia May 10, 2018 Air Quality Study with Attachments. H1328a

Crest Area Topography Map H1336a

A-1, Estimated Air Pollutant Emission Rates of Natural Gas Combustion Units H1337a

A-2, estimated air pollutant emission rates of the heater combustion units. H1338a

Energy Use and Emissions Comparisons H1339a

Ambient Air Concentration Estimates of Criteria Air Pollutants using the NJDEP Risk Screening H1340a

Ambient Air concentrations at Receptor Based on the NJDEP Risk Screening Worksheet H1341a

Estimated Worst-Case Ambient Air Concentrations of Air Pollutants Emitted from the Natural Gas Heater at varying distances H1342a

References H1345a

Holmdel Environmental Commission June 11, 2018 Memorandum of Category One Waters and possible effect on them, with enclosures. H1346a

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NJDEP Regulations, N.J.A.C. 7:8, Stormwater Management H1348a

NJDEP's November 2012 "Evaluation of NJDEP's Category One Antidegradation Designation Process H1387a

NJDEP Regulations, N.J.A.C. 7:9B, Surface Water Quality Standards H1430a

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NJDEP Regulations, N.J.A.C. 7:9B, Surface Water Quality Standards, continued, H1499a to H1543a.

Email from Holmdel's Coscia August 9, 2018 enclosing..... H1544a

Letter by Holmdel's Environmental Commission August 9, 2018, opining emission from the proposed regulator would cause degradation to Category 1 waters and that NJDEP requires a permit..... H1545a

Email from NJNG's Skidmore to Holmdel's Coscia August 30, 2018 submitting Potenta's response to the Environmental Commission comments H1546a

NJNG's Potenta August 30, 2018 letter comments on the Environmental Commission comment letter of August 9, 2018 H1547a

Email from Holmdel's Coscia to NJNG September 10, 2018, enclosing the Surface Water Quality Review H1553a

Surface Water Quality Review by Holmdel's Ploussas September 10, 2018 H1554a

Email from Holmdel's Coscia to NJNG September 11, 2018 enclosing Environmental Commission Memo H1558a

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September 11, 2018 commenting on investigation of
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NJNG’s Potenta resubmitted August 30, 2018 comments
on the Environmental Commissions August 9, 2018, with
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CO₂-driven experimental acidification effects. H1563a

Email from NJNG’s Skidmore to Holmdel’s Coscia
September 25, 2018 enclosing Potenta’s September
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Potentia’s September 25, 2018 letter for NJNG replying
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Email from Holmdel’s Coscia to NJNG’s Skidmore enclosing
Engineering Review 2A. H1579a

Holmdel’s Ploussas October 9, 2018 Engineering
Review 2A following up on the September 6 Review
and urging NJNG to review other types of heaters. H1580a

Attachment: EPA’s Health and Environmental Effects
of Hazardous Air Pollutants H1582a

Attachment: EPA’s What are Hazardous Air
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NJNG’s Skidmore email October 19, 2018 to Holmdel’s
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Holmdel’s Ploussas H1584a

NJNG’s Potenta October 18, 2018 response to the Ploussas
October 9, 2018 report that VOC pollutants
would be emitted only hypothetically

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Attachment: Email from Ploussas' firm's Flammia to NJNG's Skidmore May 22, 2018 forwarding Ploussas' request for the designer of the regulator station H1590a

Attachment: Holmdel's Ploussas request for the engineer who designed the proposed regulator station. H1591a

Email chain among NJNG's Skidmore and Holmdel's counsel Pflieger over outstanding requirements that will not be met by the hearing date, controversy over alternative heater equipment efforts and inquiries H1592a

Letter from NJNG's Skidmore responding to Holmdel's Ploussas request for design and processing information stating that it is not within Zoning Board jurisdiction To determine the appropriate heater H1598a

Email from Holmdel's Coscia to NJNG's Skidmore attaching the review on Surface Water Quality H1601a

Holmdel's Ploussas Engineering Review No. 3 on Surface Water Quality and air pollution impacts from the regulator station proposed is included in this Appendix at Ha1554.

Email from Holmdel's Coscia to NJNG's Skidmore attaching the Ploussas Engineering Review No. 2A dated October 9, 2018 H1602a

Holmdel's Ploussas Engineering Review No. 2A dated October 9, 2018 is included in this Appendix at Ha1580

Email from Holmdel's Coscia to NJNG's Skidmore October 16, 2018 enclosing Ploussas Engineering Review No. 4 H1603a

Holmdel's Ploussas Engineering Review No. 4 dated October 16, 2018 detailing NJNG's proposal for a heater and its polluting affects, attaching H1604a

Hot Cat Pipeline Heater sketch H1606a

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Hot Cat Benefits	H1608a
Installation.....	H1609a
Operation.....	H1610a
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Email from NJNG’s Skidmore to Holmdel’s Coscia October 19, 2018 enclosing the Potenta response.....	H1616a
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Email from NJNG’s Skidmore October 24, 2018 enclosing her response to the Ploussas October 16, 2018 Review	H1617a
NJNG’s Skidmore responded October 24, 2018 to Holmdel’s Engineering Consultant Ploussas claiming inaccuracies	H1618a
NJNG response to RCR-ENG-9 (2018) re no communication with Holmdel about other stations which could be expanded	H1620a
NJNG response to RCR-ENG-10 (2018) re icing	H1622a
Attaching photo showing equipment encased in ice.....	H1623a
NJNG response to RCR-ENG-11 (2018)	H1624a
NJNG cover letter March 3, 2020 enclosing response to RCR-ENG-12	H1625a
NJNG response to RCR-ENG-12 (2018)	H1626a
NJNG response to RCR-ENG-13 (2018)	H1630a

Attachment A: CWT heater manufacturer providing data H1632a

NJNG response to RCR-ENG-14 (2018) H1633a

RC-15: Cover letter and Holmdel response to discovery request
RCR-TWP-1 (SOICR p. 13) (Staff also listed these as S-15): H1636a

Holmdel response to RCR-TWP-1 by Mosley on need for
NJNG to prove station is necessary. H1637a

The New Jersey Board of Public Utilities, Staff (“Staff”) Exhibits filed in OAL Dockets PUC 01160-17 and PUC 17810-18 beginning October 19, 2020, as listed in the Appendix to the Decision and Order issued by Hon. Elia A. Pelios, A.L.J., May 18, 2022 (SOICR #93):

S-1: NJNG responses to discovery requests RCR-ENG-1, -2, -5 to -9 (BPU Docket. No. GO17010023) are included in this Appendix at Exhibits RC-1 and attachments at Ha1086 to Ha1248. (SOICR p. 8)

S-2: NJNG responses to discovery requests RCR-ENG-3, -4, and -10 (BPU Docket. No. GO17010023) are included in this Appendix at Exhibits RC-2 and attachments at Ha1249 to Ha1255. (SOICR p. 8)

S-3: NJNG responses to discovery requests RCR-ENG-11 to -14 (BPU Docket. No. GO17010023) are included in this Appendix at Exhibits RC-3 and attachments at Ha1260 to Ha1280. (SOICR p. 8)

S-4: NJNG responses to discovery requests RCR-ENG-15 to -17 (BPU Docket. No. GO17010023) are included in this Appendix at Exhibits RC-4 and attachments at Ha1281 to Ha1287. (SOICR p. 8)

S-5: NJNG responses to discovery requests RCR-ENG-18 and -19 (BPU Docket. No. GO17010023) are included in this Appendix at Exhibits RC-5 and attachments at Ha1288 to Ha1293. (SOICR p. 8)

S-6: NJNG responses to discovery requests RCR-ENG-1 to -14 (BPU Docket. No. GO17010023) are included in this Appendix at Exhibits RC-6 and attachments at Ha1294 to Ha1635. (SOICR p. 8)

S-7: NJNG responses to discovery requests Holmdel 1-22 and HOLM-NJNG-PNL-23 to -125 dated May 22, 2020. NJNG responses to Holmdel 1-22 are included in this Appendix at Ha313 to 536. NJNG responses to HOLM-NJNG-PNL-42 to 77 are included in this Appendix at Exhibits Holm-45 to 80 at Ha561 to Ha610. NJNG responses to HOLM-NJNG-PNL-79 to 115 are included in this Appendix as Exhibits Holm-81 to Holm-115 at Ha611 to Ha647. NJNG responses to HOLM-NJNG-PNL-122 to 125 are including in this Appendix as Exhibits Holm-118 to Holm-121 at Ha649 to Ha652. (SOICR p. 9)

NJNG response to discovery request HOLM-NJNG-PNL-23 H1638a

NJNG response to discovery request HOLM-NJNG-PNL-24 H1639a

NJNG response to discovery request HOLM-NJNG-PNL-25 H1640a

NJNG response to discovery request HOLM-NJNG-PNL-26 H1641a

NJNG response to discovery request HOLM-NJNG-PNL-27 H1642a

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NJNG response to discovery request HOLM-NJNG-PNL-28 H1643a

NJNG response to discovery request HOLM-NJNG-PNL-29 H1644a

NJNG response to discovery request HOLM-NJNG-PNL-30 H1645a

NJNG response to discovery request HOLM-NJNG-PNL-31 H1646a

NJNG response to discovery request HOLM-NJNG-PNL-32 H1647a

NJNG response to discovery request HOLM-NJNG-PNL-33 H1648a

NJNG response to discovery request HOLM-NJNG-PNL-34 H1649a

NJNG response to discovery request HOLM-NJNG-PNL-35 H1650a

NJNG response to discovery request HOLM-NJNG-PNL-36 H1651a

NJNG response to discovery request HOLM-NJNG-PNL-37 H1652a

Attachment A: BPU Decision and Order issued September 14, 2009, “I/M/o the Appeal of Jersey Central Power & Light Company pursuant to N.J.S.A. 40:55D-19 from a Decision of the Township of Tewksbury Land Use Board Denying the Construction of a 230 kV/as.5kV Substation,” in BPU Docket No. EO09010010 H1653a

NJNG response to discovery request HOLM-NJNG-PNL-38 H1671a

NJNG response to discovery request HOLM-NJNG-PNL-39 H1672a

NJNG response to discovery request HOLM-NJNG-PNL-40 H1673a

NJNG response to discovery request HOLM-NJNG-PNL-41 H1674a

NJNG response to discovery request HOLM-NJNG-PNL-78 H1675a

NJNG response to discovery request HOLM-NJNG-PNL-113 H1676a

NJNG response to discovery request HOLM-NJNG-PNL-114 H1677a

NJNG response to discovery request HOLM-NJNG-PNL-115 H1678a

NJNG response to discovery request HOLM-NJNG-PNL-116 H1679a

NJNG response to discovery request HOLM-NJNG-PNL-117 H1680a

NJNG response to discovery request HOLM-NJNG-PNL-118 H1681a

NJNG response to discovery request HOLM-NJNG-PNL-119 H1682a

NJNG response to discovery request HOLM-NJNG-PNL-120 H1683a

NJNG response to discovery request HOLM-NJNG-PNL-121 H1684a

NJNG response to discovery request HOLM-NJNG-PNL-122 H1685a

NJNG response to discovery request HOLM-NJNG-PNL-123 H1686a

NJNG response to discovery request HOLM-NJNG-PNL-124 H1687a

S-8: NJNG responses to discovery requests HOLM-NJNG-OTT-126 to -156 (except HOLM-NJNG-OTT-133) (see also Holm-123 to -147) (SOICR p. 9) NJNG responses to requests HOLM-NJNG-OTT-126 to 129 are included in this Appendix as Holm-123 to 126 at Ha653 to Ha656.

NJNG response to discovery request HOLM-NJNG-OTT-130 H1689a

NJNG response to discovery request HOLM-NJNG-OTT-131 H1690a

NJNG response to discovery request HOLM-NJNG-OTT-132 H1691a

NJNG response to discovery request HOLM-NJNG-OTT-134 H1692a

NJNG response to discovery request HOLM-NJNG-OTT-145 H1693a

S-9: NJNG responses to discovery requests HOLM-NJNG-OTT-133 (SOICR p. 9) H1694a

S-10: NJNG Cover letter to responses to discovery requests HOLM-NJNG-NCF-157 to -167 (see also Holm-149 to -152) dated May 14, 2020 (SOICR p. 9), enclosing responses. H1695a

NJNG’s General Reservations and Objections to Discovery Requests from the Township of Holmdel H1699a

NJNG responses to HOLM-NJNG-NCF-157, 160, 164 and 166 are Exhibits Holm-149 to 152 and included in this Appendix at Ha684 to Ha694.

NJNG response to HOLM-NJNG-NCF 158 H1701a

NJNG response to HOLM-NJNG-NCF 159 H1702a

NJNG response to HOLM-NJNG-NCF 161 H1704a

NJNG response to HOLM-NJNG-NCF 162 H1705a

NJNG response to HOLM-NJNG-NCF 163 H1706a

NJNG response to HOLM-NJNG-NCF 165 H1707a

NJNG response to HOLM-NJNG-NCF 167 H1708a

S-11: NJNG responses to discovery requests HOLM-NJNG-POT-168 to -180 dated May 14, 2020 (see also Holm-153 to -165)(SOICR p. 9) are at Exhibits 153 to 165 and included in this Appendix at Ha695 to Ha707.

S-12: NJNG responses to discovery requests HOLM-NJNG-CH-181 to -210 dated May 14, 2020 (see also Holm-166 to -195) are Exhibits Holm-166 to 195 and are included in this Appendix at Ha708 to Ha768.

S-13: NJNG supplemental responses to discovery requests HOLM-NJNG-CH-193 and -194 dated June 11, 2020 (see also Holm-178A and -179A) (SOICR p. 9) are at Exhibits Holm-178A included in this Appendix at Ha723-750 and Holm-179A is included at Ha752.

S-14. NJNG responses to Holmdel's discovery requests 117 and 118, designated as confidential by NJNG, dated June 8, 2020 (see also Holm-116 and -117) are submitted under separate cover. They have not been included in this Appendix.

S-15. Holmdel response to discovery request RCR-TWP-1 dated April 3, 2020 (see also RC-15) (SOICR p. 9) is included in this Appendix at Exhibit RC-15 at Ha1636.

S-16: Holmdel cover letter and responses to NJNG discovery requests NJNG-HOLM-BLM-1 to -30 dated March 31, 2020 by Mosley (see also P-13 to -25) (SOICR p. 9) H1709a

Attachment 1: List of Mosley's service on FERC natural gas transportation and storage matters H1728a

S-17: Holmdel cover letter and responses to NJNG discovery requests NJNG-HOLM-DM-1 to -29 by Moliver (see also P-26) (SOICR p. 9) H1730a

S-18: Holmdel responses to NJNG discovery requests NJNG-HOLM-PS-1 to -13 dated April 23, 2020 by Santhana (see also P-28) (SOICR p. 9) H1744a

Attachment: Curriculum vitae of Prakash Santhana H1752a

I. PRELIMINARY STATEMENT

In 2012, NJNG installed a 16-inch natural gas (wholesale) distribution pipeline on Holmdel Road, in Holmdel Township, Monmouth County. At that time, it installed what it inaccurately refers to as a “temporary regulator,” to depressurize gas from transport pressure to retail end-user pressures. In the ordinary course, depressurizing natural gas results in a chilling effect. This current regulator does not have a heater, but remains in reliable service and can provide safe and reliable service for many years to come. Also in 2012, NJNG purchased the large combustion heater it proposes to install, which is the subject of this proceeding, in a non-competitive sole-source procurement. NJNG twice applied to the Holmdel Township Board of Zoning Adjustment (ZB) for variances to install the combustion regulator, at two different locations. The ZB denied both applications.

Thereafter, NJNG twice petitioned the Board of Public Utilities (BPU) pursuant to a provision of the Municipal Land Use Law that authorizes the BPU to override local zoning decisions if the proposed facility is “reasonably necessary” for utility service. The BPU assigned the petitions to the Office Of Administrative Law (OAL). NJNG ultimately favored one location and petition, for 960 Holmdel Road, and pursued that case. After motions and incomplete discovery, virtual

hearings were held. After briefs and a long delay, the Administrative Law Judge issued an Initial Decision (ID) approving the NJNG petition for 960 Holmdel Road. The BPU adopted the ID as its final decision. Very recently, NJNG commenced construction and this court denied Holmdel's emergency request for a stay pending this appeal.

The ID and BPU Decision violated basic tenets of administrative law. In pre-filed written testimony NJNG claimed that the current regulator presented very serious safety and service issues and the proposed combustion fired regulator was essential to avoid these consequences. The same NJNG witnesses conceded on cross-examination that these claims were overblown and inaccurate, and that the current regulator presented no safety or reliability issues. The ID and the BPU found these conflicting testimonies "credible," which is arbitrary and capricious, based not on the complete record but only on the carefully lawyered written testimony. Both testimonies can not be credible. The ID and BPU expressly declined to comply with the State's climate laws and the 2019 Energy Master Plan, which by law must be applied by the BPU "to the maximum extent practicable and feasible." The climate laws and EMP set out an ambitious and achievable reduction in carbon fueled emissions by 2050, with interim objectives such as prohibiting any new natural gas connections starting in 2025.

The ID and BPU Decision also arbitrarily and capriciously allowed NJNG to evade its legal obligation to consider alternatives to its proposed regulator, including continuing the status quo and considering a catalytic regulator. Here again, the ID and BPU “credited” the written pre-filed testimony about problems with catalytic heaters and ignored and never mentioned the extensive cross-examination which proved the “problems” to be virtually non-existent.

Finally, based on no binding law, the ID and BPU ignored the detailed findings of the Holmdel ZB on why the NJNG proposed regulator was inconsistent with the Township’s zoning and master plan. Instead of crediting the BPU, which by law is charged with being expert on the local conditions and zoning, the ID and BPU credited the paid testimony of an NJNG expert.

II. STATEMENT OF PROCEDURAL HISTORY

This is an appeal from a decision of the BPU in two consolidated cases. Ha38. The first case was not seriously pursued and the BPU Decision did not address it.

On January 17, 2017, To Company (NJNG) applied to the Holmdel Township Board of Zoning Adjustment (ZB) to install a natural gas regulator station (Regulator) at 970 Holmdel Road. Ha38. The ZB denied the application by Resolution dated March 15, 2017. Ha413. NJNG filed a petition with the BPU pursuant to N.J.S.A. 40:55D-19 to override the decision of the ZB, which

was docketed as BPU Docket No. GO17010023, and transmitted to the Office of Administrative Law (OAL), docketed as OAL Docket No. PUC 01160-2017S. Ha38. The case was put on "inactive status" while NJNG explored an alternative site. NJNG thereafter only pursued this petition except as a formality and the BPU order appealed from did not decide anything about it. We will not address it further.

Thereafter, on January 2, 2018, NJNG filed an application at the ZB to install the regulator station at 960 Holmdel Road, Ha38, which after extensive hearings the ZB denied by Resolution dated December 12, 2018. Ha280, Ha306. NJNG filed a petition on November 29, 2018 with the BPU pursuant to N.J.S.A. 40:55D-19 to override the decision of the ZB, Ha39, together with accompanying prefiled direct testimony and exhibits, which was docketed as BPU Docket GO1811125 and assigned to the OAL as PUC 18810-20185. The consolidated petitions were assigned to Hon. Elia Pelios. Ha39.

On March 2, 2020, Holmdel moved to require NJNG to reconsider its petition in light of the adoption of the 2019 Energy Master Plan (EMP), Ha269, adopted on January 27, 2020, Ha438, which mandated a reduction in natural gas usage in New Jersey by 75% by 2050. Ha923-924. By order dated June 11, 2020, the ALJ denied this motion, based on his reasoning that the EMP was not self-executing but required additional actions by the Department of Environmental Protection, Ha247, Ha251, which was manifestly incorrect.

Although not explicitly authorized by the case management order, Holmdel served discovery on NJNG, which NJNG answered only in part while objecting to most of the requests. Holmdel served its pre-filed testimony with exhibits beginning on October 13, 2020. NJNG served rebuttal testimony on April 3, 2020. Ha180. Holmdel then served discovery on the rebuttal testimony, which NJNG answered only in part while objecting to most of the requests.

Holmdel fled a motion to compel answers to its discovery on June 30, 2020, Ha180, but the ALJ did not act on it until October 7, 2020, Ha166, shortly before the start of the hearings. He gave no reason for the delay.

Virtual hearings were held on October 15, 17, 20, 21, 22, and 23, 2020, and the ALJ declared the record closed effective January 19, 2021. Ha62. The ALJ did not issue an Initial Decision until May 18, 2022, giving no reason for the delay. Ha62. Holmdel filed its brief on exceptions on July 5, 2022, NJNG and Rate Counsel filed responsive briefs on July 29, 2022. After requesting two extensions of time, the BPU issued its Decision on December 21, 2022, with an effective date of December 28, 2022. Ha38, Ha57. Holmdel noticed its appeal on January 30, 2023. Ha34.

III. FOUNDATIONAL FACTS

Holmdel sets forth here the basic facts. Facts that are specific to

particular arguments will be set forth in those sections below.¹

In 2012, NJNG installed a new 16-inch transmission line through portions of Holmdel Township, which runs in part past 960 and 970 Holmdel Road and terminates at Crawfords Corner Road. Ha500 and Ha528. The 16-inch line was intended to replace an existing 10-inch line, which remains in service as part of the distribution lines. The fundamental reason for the 16-inch line, according to the company's filings at the BPU, was that it was needed to comply with federal safety regulations, and more specifically, a requirement that transmission lines be capable of being safely inspected by an inline inspection device, often referred to as a "pig" or "smartpig."

At the time it commissioned the new line, NJNG intended to install a large gas-fired combustion regulator station to handle the depressurization of natural gas from transmission pressures exceeding 700 pounds per square inch (psi) to approximately 100 psi or lower. That depressurization produces freezing temperatures. NJNG planned to eliminate the freezing temperatures

¹The transcripts of the evidentiary hearings before the OAL will be cited as follows in this brief, using the style for Appellate Division briefs:

#Tpage #:line #-line#

Thus, 1T = October 14, 2020

2T = October 16, 2020

3T = October 20, 2020

4T = October 21, 2020

5T = October 22, 2020

6T = October 23, 2020

by operating a large gas combustion heater at the regulator station.

NJNG purchased the planned heater in late 2012 and early 2013, by soliciting one bid from one supplier and accepted that bid without even bothering to see if it could get a better heater elsewhere, or get a better price, or acquire a less intrusive and polluting heater. It paid approximately \$230,000 and the heater has been sitting ever since. NJNG has now spent more than \$1.8 million and counting in legal and expert fees, retaining at least three law firms and five experts, pursued two applications at the Holmdel ZB and the two petitions under challenge.

When it installed the new 16-inch line, NJNG included what it refers to as the "temporary regulator," which is a misnomer given its current and projected longevity and reliability. This smaller regulator is enclosed in a casement under Holmdel Road and is unheated. The company's claims about this regulator's reliability are, to put it charitably, so wildly exaggerated as to amount to falsity, BPU Docket No. GO17010023, OAL Docket No. PUC 01160-2017S, is NJNG's petition to approve the installation of a gas regulator station on an easement at 970 Holmdel Road, in Holmdel Township, Monmouth County. The Holmdel ZB denied NJNG's application for several variances to permit that installation by Resolution dated March 15, 2017. Ha413. The company has not pursued this application except as a formality and we will not address it further.

BPU Docket No. GO18111257, OAL Docket No. PUC17810-2018S is NJNG's petition to approve the installation of the gas regulator station on an easement at 960 Holmdel Road, in Holmdel Township, Monmouth County. The Holmdel Township ZB denied the company's Application for several variances to permit that installation by Resolution dated December 12, 2018. Ha280. After the petition was filed, the parties engaged in settlement discussions over a period of many months, resulting in a settlement that the Holmdel Township Committee rejected.

IV. ARGUMENT

1. Standard Of Review

Judicial review of administrative agency action is limited to three functions: whether the agency's action violates express or implied legislative policies; whether the record contains substantial evidence to support the agency's findings; whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not have been made on a showing of the relevant factors. In Re Proposed Quest Academy Char., 216 N.J. 370, 385 (2013). Specifically to this case, "a failure to consider all the evidence in a record would perforce lead to arbitrary decision making." Id. at 386 (citations omitted). Also specifically to this case, a court may intervene when the agency action is "inconsistent with its mandate." Id. at 385 (citations omitted).

“Arbitrary and capricious” in the administrative setting means “willful and unreasoning action without consideration and in disregard of circumstances.” Beattystown Community Council v. D.E.P., 313 N.J. Super. 236 (App. Div. 1998).

This court is not bound by the ALJ's findings. In re Suspension of License of Silberman, 169 N.J. Super. 243, 255-56 (App. Div. 1979), *aff'd*, 84 N.J. 303 (1980). The court is not bound by or owes any deference to the BPU's interpretation of law. N.J. Ass'n of Realtors v. N.J. Dep't Of Env'tl. Prot., 367 N.J. Super. 154, 150-60 (App. Div. 2004).

2. NJNG Always Has The Burden Of Proof And Persuasion (Argued Below: Ha105)

N.J.S.A. 40:55D-19 itself does not specify that the petitioning utility has the burden of proof, and so the decisions of our courts, specifically, the Supreme Court, govern. The Supreme Court has recognized that the burden of persuasion" can vary depending upon the type of proceeding, the comparative interests of the parties, the relative litigational strengths or weaknesses of the parties, the access of the parties to proof, and the objectives to be served by the evidence in the context of the particular proceeding." Romano v. Kimmelman, 96 N.J. 66, 89 (1984)(emphasis added). Normally, the allocation of burdens is not embodied in statutory law, but is a decision reserved for the courts. In re Will of Smith, 108 N.J. 257, 264 (1987). Generally, the burden of persuasion is imposed on the party best able to satisfy it because of its "greater expertise and

access to relevant information." J.E. on behalf of G.E. v. State, 131 N.J. 552, 569-70 (1993). "[T]he burden of establishing the existence of a fact or circumstances is on the party relying thereon." Snyder v. I. Jay Realty Co., 53 N.J. Super., 336, 347 (App. Div. 1958), aff'd in part, rev'd in part, 30 N.J. 303 (1959). Thus, the burden of proof in this proceeding is on the petitioner, NJNG, and that burden never shifts.

In cases under N.J.S.A. 40:55D-19, this applies with greater force. In these cases, the utilities enjoy overwhelming advantages. The utility can spend substantially more money than any other party because it has access to ratepayer funds. NJNG deployed two law firms and corporate counsel, with at least four active lawyers, and another law firm at the zoning board. It retained five experts. The issues mostly concern matters peculiar to the detailed operations of utility infrastructure, which is certainly the case here, and the utility can rely substantially on its own employees and officers. Much if not most of the information is closely held by the utility. NJNG has "greater expertise and access to relevant information." J.E. on behalf of G.E. v. State, 131 N.J. at 560-70.

3. The Initial Decision And BPU Decision Did Not Consider The Entire Record; They Relied Upon An Arbitrary and Capricious Selection Of NJNG's Pre-Filed Direct Testimony And Ignored The Cross Examination Of The NJNG Witnesses (Argued Below: Ha105)

NJNG's witnesses on the need for the proposed regulator presented two contradictory testimonies. First, there is the carefully lawyered and curated pre-

filed direct testimony, artfully drafted to present the very best possible – and highly distorted and inaccurate – view of the relevant facts. The court should be mindful that unlike direct oral testimony in a courtroom, which is usually the object of careful preparation, the OAL direct testimony here is pre-filed in written form, allowing the NJNG lawyers the maximum control over virtually every sentence of the testimony. But then, by strong contrast, there is the opposite testimony of those same NJNG witnesses on cross-examination, in which they conceded away nearly all of the salient points in those carefully curated written pre-filed directs. We demonstrate this below.

These two testimonies were in stark contradiction, and thus a bland statement by the ALJ and adopted by the BPU that the NJNG witnesses were “credible” is arbitrary and capricious. Ha70-72. It is not possible that both direct and cross were credible.

Given a choice between these contradictory testimonies, the correct starting point, and in this case, conclusion, would be to favor the testimony elicited on cross-examination. "Our legal system has long recognized that cross-examination is the 'greatest legal engine ever invented for the discovery of truth.'" State v. Basil, 202 N.J. 570, 591 (2010), quoting California v. Green, 399 U.S. 149, 158 (1970) (citation and internal quotation marks omitted)). Cross-examination of an expert is often a crucial element in determining the accuracy, reliability, and probative value of the expert's findings and opinions.

See State v. Martini, 131 N.J. 176, 264 (1993) ("To determine the credibility, weight and probative value of an expert's opinion, one must question the facts and reasoning on which it is based.") (citing Johnson v. Salem Corp., 97 N.J. 78, 91 (1984)).

Thus the ALJ and the BPU were required to at the very least explain why they found the lawyered direct testimony more "credible" than the cross-examination. They did not.

The BPU is not bound by the findings of fact made by the ALJ. See Public Advocate Dept. v. Public Utilities Bd., 189 N.J. Super. 491, 507 (App. Div. 1983). The ALJ in these cases was required to set out factual findings based on the "weight and credibility of evidence" of "the entire record." See State Dept. of Health v. Tegnazian, 205 N.J. Super. 160 (App. Div. 1985) (emphasis added). As we noted above, "a failure to consider all the evidence in a record would perforce lead to arbitrary decision making." In Re Proposed Quest Academy Char., supra, 216 N.J. at 386. This manifestly did not happen. The BPU's uncritical acceptance of this woefully inadequate decisionmaking compounds the errors.

The company's pre-filed direct and rebuttal testimony were disingenuously written so as to leave the impression that very, very serious consequences would result if the proposed regulator was not installed immediately.

This of course defies the most elementary common sense. To begin with, by the time the OAL hearing had ended, the 16-inch pipeline had been in service with the “temporary” regulator for eight years while the proposed regulator sat unused in a yard somewhere. Long periods of inactivity have transpired in these proceedings. As of the filing of this brief, eleven years of reliable service have occurred. And of course, it would take a pretty stupid public utility to operate its system in an unsafe manner, let alone one that might cause disastrous consequences if it malfunctioned as the company’s direct testimony claimed. The hearing demonstrated this to be patently false. The current regulator arrangement is safe and efficient. It is capable of servicing the company's projected demand (even taking no account of the Energy Master Plan and mandatory reductions under the Clean Energy Act and Global Warming Response Act). It poses no danger to the public or to NJNG's infrastructure. It emits no greenhouse gases and consumes no natural gas. Moreover, it is capable of providing the necessary de-pressurization for at least another nine years, in other words, to 2032. All of this is taken from the company’s own witnesses, on cross-examination. By then, as we discuss below, mandatory reductions in natural gas consumption will have confirmed that the 16-inch transmission line was an expensive, underutilized asset on the day it went into service, and the proposed combustion regulator a very expensive and useless stranded asset.

The 16-inch line was constructed because of an asserted need under

Federal regulations:

MR. WYCKOFF: I think I'm just going to add that, while there was no regulator station involved, the purpose of this – of the transmission line replacement project with new 16-inch you referred to was to replace an existing 10-inch transmission line for a number of reasons. Two of the primary ones were for reliability due to its age, as well as for compliance reasons related to federal regulations on pipeline integrity, the ability to do inspections, things of that nature.
[1T132:8-25, -133:1-13.]

[MR. DICKSON] Q. What specific federal regulations are you talking about?

[MR. WYCKOFF]. A. The pipeline integrity rules. I'm not sure of the specific, but it's part of CFR Part 192, the Code for (sic) Federal Regulations related to gas transmissions.

Q. And is it your testimony that those rules required you to replace the 10-inch line in 2012?

A. At some point, yes, we would have had to do that because the existing line was not able to be in-line inspected as is required as part of that rule.

[1T133:25, -134:1-25, -135:1-25.]

Q. When was the distribution line installed? We were talking about its age.

A. The original 10-inch line was installed some time in the -- I think different parts in -- older parts in the 1950s or 1960s.

Q. We're talking about an 8-mile stretch here. Can you not be more specific?

A. I don't recall at this time. No.

Q. Now, at the time you installed the transmission line you also installed what we refer to as a temporary regulator, correct?

A. Yes.

Q. And it's your position that that regulator was temporary on the very first day it went into service?

A. That's correct.

[1T133:25, -134:1-25, -135:1-25.]

However, the 10-inch line was originally installed in 1965 and 1968. The stated purpose of the 16-inch line was to "increase supplier diversity" and to

improve the Monmouth County system, and to "also allow for the in-line inspection of this transmission line, as the current line cannot utilize smart pig technology in its current configuration." Ha521. None of this had anything to do with "reliability" or "age." At the time, NJNG represented, and the BPU accepted, that this was one of several projects that had been in the planning stages and were now being accelerated in order to specifically mitigate the negative impact of the 2008 recession. "Based on the continued need to stimulate the economy and further foster job retention or creation in NJNG's service territory...." Ha521.

The new line was engineered to operate at a maximum allowable operating pressure (MAOP) of 722 pounds per square inch (psi). The so-called temporary regulator to reduce pressure was engineered for a long useful life.

[MR. DICKSON] Q. Putting aside the question of a permanent regulator station being constructed, at the time the temporary regulator was installed, what was its expected useful operational life?

[Colloquy omitted.]

MR. SANDERS: From a material standpoint, a mechanical device standpoint, it depends on maintenance. It could be 15, 20 years depending on, again, the operation of the location. It could be longer as well.

[1T137:3-25, -138:1-16, emphasis added.]

But this was not accurate. When pressed, the witness admitted that the current regulator had a much longer useful life:

BY MR. DICKSON: Q. Let me ask you to turn to Holmdel Exhibit 27, please, the answer to Holmdel discovery No. 5. Let me know when you have it.

[MR. SANDERS] A. Yes, I have it.

Q. In the response to this question you have provided a depreciation

schedule, which was one of the things that this question called for. Turning to the last page of this exhibit, am I correct that according to this depreciation schedule there are approximately 22 more years of useful life on this temporary station after April of 2020?

MR. SANDERS: I would defer that to...

MR. WYCKOFF: That would -- in financial terms, yes, that would be correct.

[1T:139:7-22, emphasis added.]

Given that depreciation allows a deduction from taxable income, there would be no reason to adopt a longer depreciation that did not fairly reflect the actual useful life of the regulator.

Not surprisingly, the current regulator is safe and represents no danger to the public or NJNG's infrastructure.

[MR. DICKSON:] Q. The temporary regulator station operates safely and does not represent a safety hazard to the surrounding area, correct?

MR. SANDERS: Can you repeat the question again, please?

MR. DICKSON: The temporary regulator station operates safely and does not represent a safety hazard to the surrounding area?

MR. SANDERS: That's correct.

[1T140:18-25, -141:1-11, -144:19-25, -145:1-6.]

BY MR. DICKSON:

Q. Yes or no, Mr. Sanders, does the temporary regulator represent a safety hazard to New Jersey Natural Gas's gas infrastructure?

A. No, it does not.

[1T140:18-25, -141:1-11, -144:19-25, -145:1-6.]

In addition, the current regulator is designed and configured such that it can reasonably accommodate NJNG's current and projected future load served by this line:

[MR. DICKSON] Q. Now, you said the increase in load was less than 1 percent. What time period are we talking about?

[MR. WYCKOFF] A. I believe that's generally per year.

Q. Per year? And how far out does that projection stand?

A. Within, I believe, the next five years. Our marketing group usually does projections out three to five years.

Well, is it three or is it five? That's a big difference.

A. Normally it's three.

Q. Does the Company do load increase projections beyond five years?

A. I -- no.

[1T:147:13-25, -148:1-2.]

And this load projection takes no account whatsoever of the EMP's stated objective of "aggressively" reducing the consumption of natural gas:

[MR. DICKSON] Q. Has the Company made any change to its anticipated load increase projections based on the Energy Master Plan?

[MR. WYCKOFF] A. No, not at this time.

Q. And that includes anticipated and projected loads to be served by this temporary regulator? You have not made any adjustments to the anticipated need based on the Energy Master Plan?

A. Not through the engineering department, no. Our other departments may have, but not from an engineering planning perspective.

Q. What are those other departments, please?

A. That would be our regulatory department, I believe.

Q. Has your engineering department received any instructions to revise or reassess your anticipated load growth based on the Energy Master Plan?

A. No, not at this time. We only project out about three years.

Q. Are you aware of any projection of anticipated load growth that's been done by the regulatory department based on the Energy Master Plan?

A. No, I am not.

[1T148:3-25.]

The company operates the 16-inch line at reduced pressures, but that, too, is safe and reliable.

[MR. DICKSON] Q. What is the actual pressure at which you are operating, the inlet line pressure? You said it was a lower pressure. What is it, please?

[MR. SANDERS] A. It varies between -- you know, winter pressures can be 450 pounds at max.

Q. Anything during other seasons, any different?

A. Yeah. Depending on the season - obviously, during the summers we

have a lower pressure setting for the regulator stations that feed that station, so it may be 25 pound slower (sic) or so, maybe around 400 or below. During our non-peak periods, low gas usage.

Q. And is there any safety concern about the temporary regulator being able to handle those kinds of pressures?

A. Not the temporary regulator, no.

[1T151:3-19. (emphasis added)]

To sum up thus far, then, based entirely on the company's own evidence on cross-examination, the current regulator is safe and efficient, and can safely handle all current load and all anticipated load in NJNG's normal planning horizons and by inference well beyond. For these reasons alone, the company has not met its burden of demonstrating that the proposed combustion regulator is reasonably necessary for the provision of service. The ID ignored all of this, as did the BPU.

Since reliability and safety are not in any way compromised, the company's case, therefore, depends entirely on its claim that the alleged "icing" problems with the current regulator must translate into a legal finding that the proposed regulator is otherwise "reasonably necessary." This claim falls apart on elementary scrutiny, and again the company's own evidence on cross-examination does the damage.

In all of its filings at the ZB and this forum, NJNG has told the same misleading story. According to NJNG, the process of depressurizing natural gas from higher transmission pressures down to distribution pressures produces severe chilling which in turn causes icing on the current regulator, which is not

heated. Again according to the company's carefully lawyered prefiled testimony, which the ID and BPU credited without explanation, this presents a risk of loss of service for an extended period of time, with potentially disastrous effects, especially if it occurs in the wintertime when residences and businesses rely on gas to provide heat. See, e.g., Ha771 and Ha774.

There is no such risk.

Common sense dictates that it would take a pretty stupid natural gas company to operate a portion of its system to present even a vanishingly small risk of such calamitous danger to the system or the community. NJNG has mitigated that risk completely out of the realm of possibility. The sky will not fall. The proposed regulator is not reasonably necessary to prevent a non-existent risk.

As we noted above, the company safely operates the 16-inch transmission line at reduced pressures. This arrangement is safe and able to accommodate all present load and projected load, as well. It also means that the company can not transport larger volumes of gas.

Since the current regulator was installed in 2012, at the same time as the 16-inch line was commissioned, there have been two and only two events of any concern at all. The pre-filed and carefully lawyered direct testimony exaggerated these incidents out of any reality. Again, it would take a pretty stupid natural gas company to operate a portion of its system such that either

one of these two minor and quickly remedied events would have posed any risk of widespread and lengthy loss of service. That didn't happen and there is no such risk.

That's because of a few things NJNG omitted from its pre-filed testimony. First, the company has a real time pressurization alarm installed on the line near the current regulator. The court will note the witness's attempts to evade the questions (and a futile diversionary objection by counsel), again proving the truth-seeking value of cross-examination.

[MR. DICKSON] Q. Describe for me, please – you discussed that you were monitoring the pressure on the line and that a change in the pressure on that line would lead you to send somebody out or accomplish some sort of proactive activity. Would you tell me how that pressurization alarm system or monitoring function works?

[MR. SANDERS] A. On our system we have various pressure points and control points through our SCADA system [Supervisory Control And Data Acquisition, the gathering of data in real time from remote locations in order to control equipment and conditions.] Our gas control operation system, controls flows and pressures throughout our system – transmission distribution system.

Q. And the monitoring for this particular regulator, how is that done? Where is the actual monitoring point? Let me break that down. How is this particular regulator station monitored under the SCADA system?

A. This station is not monitored under the SCADA system.

Q. How is this particular regulator station monitored for pressure issues?

A. The station isn't monitored as part of the SCADA system. The general system is monitored.

Q. Okay. Then you can answer my question. Where is the monitoring point?

A. The monitoring point that we have is on Holmdel Road. I would say it's – I don't know exactly where it is, but it's in the vicinity of the southern end on the 60-pound system.

Q. Thank you. And what level of pressure do you need to see on this monitoring system that leads you to believe there might be a deicing issue that needs attention?

A. We'll typically get an alarm on a low - or a high-pressure line, which would trigger us to investigate this particular area. So based on the set point, we may see a few - it depends on the controller, the controller's judgment, as to whether or not it's an abnormal condition. Obviously, there's maximum pressures allowed, and we would not want our system to reach that pressure. So it would depend on a number of factors that are in the purview of our gas controller. They would make that determination as to whether or not this is a normal or abnormal operating condition.

Q. You've mentioned before -- I'm sorry, please finish your answer.

A. I was just saying if that makes sense.

Q. It doesn't matter if it makes sense to me.

[1T152:17-25, -153:1-25, -154:1-14.]

[MR. DICKSON. Q.] You mentioned before that the maximum winter pressure that you thought this portion of your system should operate under is 450, is that correct, in the wintertime?

MR. MEYER: I'm going to object. It's a mischaracterization of the testimony of what the system should be operated on. I believe that was not the question that was asked. The question that was asked was what the Company is doing to address the issue that was pointed to in the testimony.

BY MR. DICKSON: Q. As modified, you can answer that question. I think I'm just repeating what you said, but ... we're talking about a pressure level of 450 PSI, correct?

[MR. SANDERS] A. Well, this is what we're doing to mitigate these freezing issues.

Q. What is the set point on your pressure alarm system that triggers a need for some sort of proactive activity on this regulator station, the temporary station?

A. I tried to explain that to you a few minutes ago about the delivery pressure for the 60-pound system. We would monitor that. If we saw the feed, which is feeding the 125-pound system, if we saw an absent normal swing, either low or high, then that would trigger - that would trigger our response based on the - based on our controller's judgment. Obviously, a 125-pound system, there's a maximum pressure allowed. But the judgment would be on the controller if it does not reach that alarm mode.

Q. I'm just using your term. You used the term "set point." I'm just trying to find out what the set point is.

A. It varies. It will vary depending on the period of time. And, again, a set point on a 125-pound system, depending on the time of the year, it could vary. It could be 80 pounds, it could be 115 pounds, it could be - you know, it varies depending on demand.

Q. In the wintertime, what is the set point?

A. Typically 100 and -- between 110 and 115 pounds. It varies. It depends.

[1T154:15-25, -155:1-25, -156:1-6.]

[MR. DICKSON] Q. Now, you've used the term "alarm." Does that mean there's an alarm that goes off some place in a control room?

[MR. SANDERS] A. There could be, yes.

Q. When would it not be an alarm that would go off in a control room?

A. I'm sorry? I misunderstood your question.

Q. Well, you said it could be. I'm trying to find out when it wouldn't be.

A. It would always alarm in the control room, yes.

In other words, NJNG is not a stupid company that operates an unsafe system.

Q. Thank you. So if the pressure passes the set point, whatever it might be at that particular time of day, does this pressure change in information get communicated to the controller in real time?

A. Yes.

Q. It does? And the controller then has discretion, as you've described it, as to what to do, correct?

A. Yes. As they see the pressure change, they can -- they have the discretion as to what the response would be based on their training.

Q. Does the -- when we use the term "controller," are we talking to an individual sitting at a control panel?

A. Yes, we are.

Q. Can you tell me where the control panel for this particular regulator station is physically located?

[Colloquy omitted.]

BY MR. DICKSON: Q. Can you tell me where the control room that receives the monitoring signal for -- that relates to this particular regulator station, where is that control room physically located?

A. It's in Wall Township at our headquarters.

Q. Does the person who is acting as the controller, when he notices some sort of aberration, does he have a manual or a set of guidelines that he's supposed to follow? Or she, excuse me.

A. Yes. Our control room procedures are defined in Part 192 of CFR 49192, Control Room Management. We also have our own individual procedures regarding response to abnormal conditions.

Q. Now, I take it that since this temporary regulator was installed, there have been two, and only two, incidents in which some proactive action was necessary due to what was perceived to be a possibility of excessive

deicing; is that correct?

A. No, that's not correct. There ...

Q. How many such incidents have there been? There were only two identified in your testimony.

A. Two instances where we saw that the device was not responding correct -- all I know of the device itself, that can be done at the discretion of a crew leader if there's an issue. Because, for example, you have many of these vaults, because they're below ground, they'll have groundwater, and there may be an access issue. Our crews may decide to deice the regulator for access, but the two issues that were spelled out were when we saw that there was an issue that was severe, severe enough to cause the station to malfunction.

[1T156:7-25, -157:1-25, -158:1-25, -159:1-5 (emphasis added).]

In stark contrast to the sky-is-falling claim of NJNG's pre-filed testimony, this is a much more robust and proactive system for managing any possible risks of severe icing that would in turn prevent any realistic loss of service. It's what one would expect of a reasonably well run gas distribution company. It involves a real-time alarm system monitored in the company's control room, with occasional discretionary inspections by crews otherwise in the field for other reasons, and only in the wintertime. In any season but winter, there isn't even a need for discretionary visits by field crews and the real-time pressure drop alarm has not been triggered. And NJNG has "many of these vaults" in its system.

[MR. DICKSON] Q. You said that you actively visit the site. How often does that take place?

[MR. SANDERS] A. I would say – I can't give you a hard number, but I would say a half dozen or so times. It depends. Our crew – our crews have the discretion to stop by stations. But several times during the winter period they may stop by to take a look to see if there are any issues with the condition of the regulator itself from an access standpoint.

Q. What about in the other three seasons?

A. I'm sorry?

Q. I'm sorry. What about visits during the non-winter seasons?

A. We wouldn't proactively visit that site unless we had an issue that was recognized from our monitoring point. So during the non-winter seasons, if we were doing an inspection, each regulator station is inspected annually. So during that inspection the inspections typically occur during the non-heating season, so to speak. And we would visit that site for inspection, but typically, unless there's an issue, we wouldn't routinely visit that site.

[1T151:20-25, -152:1-16.]

There we have the sum total of NJNG's actual concerns about the current regulator. There are maybe six discretionary visits in the in wintertime by crews otherwise out in the field, for reasons not related to reliability or safety, or calamitous risks, and no visits in the three other seasons.

As reflected in the testimony just quoted above, once the lawyers' creative rhetoric and witnesses' evasions were overcome, there have been two and only two incidents since 2012, in which the icing was severe enough to cause the current regulator to "malfunction." In other words, at the time of the hearings, in the ten years since it was installed, there had been only two occasions when the depressurization function was jeopardized. But the alarm system functioned exactly as designed, the signal was received in the control room, in real time, and the company was able to remedy the problem the same day it was detected. When pressed about these two incidents, the company was evasive but ultimately admitted to the truth: these two incidents over the course of ten years did not present any realistic risk of loss of service, and these were the only two occasions on which any pressure drop triggered the real-time alarm. 1T163:17-

25, -164:1-25, -165:1-3. The ID and BPU Decision ignored this.

In fact, the icing “issues” that are the sole reason for replacement of the current safe, reliable arrangement are so non-existent that NJNG itself has not treated them as real issues.

[MR. DICKSON] Q. And referring to the two incidents, the two icing incidents that are covered in the rebuttal testimony, at the time that these incidents occurred, did the Company notify Holmdel Township?

[MR. SANDERS] A. No, we did not.

Q. Did the Company provide any notice to emergency management officials for Monmouth County?

A. No. We didn't deem that necessary.

Q. Did the Company provide any report of these incidents to any part of the Board of Public Utilities?

A. No. That would not be required.

Q. Did the Company provide any after-the-fact report to Holmdel Township of either one of these two incidents?

A. We have justified to -- in previous hearings as to these events, yes.

Q. In some period of time immediately after the occurrence of each of these incidents, did the Company provide a report to Holmdel Township of the incident?

A. No. That's not required as well.

Q. Whether or not it's required, you did not provide such a report?

A. We did not.

[1T182:4-25, -183:1-3.]

The "risk" is so non-existent as to not merit the attention of NJNG's risk management departments.

[MR. DICKSON] Does your company have a Risk Management function?
(Pause.)

MR. DICKSON: Any one of you can answer.

MR. SANDERS: We do have a Risk Management group, yes.

BY MR. DICKSON: Q. Have you ever provided any information about this temporary regulator to your Risk Management function?

A. No, we have not.

[1T191:8-19.]

In the same vein, NJNG's rebuttal testimony resorted to referring to an incident in 1994 in a final effort to show that sky will fall. That's 1994, now thirty-nine years ago, and it hasn't happened since.

BY MR. DICKSON: Q. Directing your attention to page 12 of Exhibit P-8, your rebuttal testimony.

THE COURT: That was page 12, Mr. Dickson?

MR. DICKSON: Yes, Your Honor.

THE COURT: Thank you. MR. SANDERS: Yes. I have it.

BY MR. DICKSON: Q. At line 4 to line 7, this testimony contains a description of what I only consider to be a pretty serious consequence, equipment failures as well as high feed pressure into homes with potentially significant risk to lives and property. Has this happened with the temporary regulator?

A. No, it has not.

Q. In the next paragraph, beginning at line 8 and concluding at line 13, you describe an icing condition severe enough to cause the downstream piping to freeze, causing infrastructure failure. Such an incident occurred at one of the company's regulator stations in 1994. Did I read that substantially correctly?

A. Yes.

Q. Has this happened since 1994, at any part of the company system?

A. No, it has not.

Again, NJNG is not a stupid company operating a risky, unsafe system.

Q. Since the installation of the temporary regulator, has the Company provided any notice to the Township of Holmdel or Monmouth County or other emergency preparedness officials of the kinds of risks that are described in these two paragraphs?

A. Can you repeat your question again?

Q. Yes. Since the installation of the temporary regulator, has the Company provided any notification to Holmdel Township or Monmouth County or any other police, fire, or emergency preparedness officials of the possibility of these kinds of risks happening?

A. That's a broad – I'll characterize it this way, is that we conduct annual drills, transmission safety drills, with local OEM. Holmdel may have been one of the participating groups, OEM, prior PB in

one of our drills in the past, but I don't have that in front of me. But we do regularly interact by way of drill as part of our safety program with the state. And also part of our federal requirements is that we have an annual transmission drill where we talk about incidents that can occur along a transmission line.

Q. Okay. That's good to know. The first passage I asked you to read involved the possibility of equipment failures as well as feeding high pressure gas into homes. Would you agree with me that that's a pretty significant risk?

A. Yes, significant consequence. Yes.

[1T182:4-25, -183:1-25, -184:1-25, -185:1-10 (emphasis added).]

BY MR. DICKSON: Q. And just so I'm clear, I'm actually reading – starting from line 4 on page 12. Mr. Sanders, or any of the other witnesses, from the time the temporary regulator was installed until the commencement of the zoning board proceeding or preliminary discussions for that, was Holmdel Township ever advised that if the frozen regulator is unable to respond to decreasing downstream demand, it is possible that high-pressure gas will be delivered into a low-pressure system, which can cause equipment failures as well as feed high-pressure gas into homes with potentially significant risk to lives and property? That's my question.

MR. SANDERS: The township was not notified of that potential consequence.

[1T188:14-25, -189:1-4 (emphasis added)]

The absence of any concerns with respect to risk management is very persuasive proof that NJNG does not, in fact and practice, believe its lawyers' panicked descriptions in pre-filed testimony of the "risks" involved with the current regulator. The ID and the BPU Decision ignored this.

It is settled law in New Jersey that a regulated utility can be held liable for the consequences of a service outage caused by the utility's negligence. See, e.g., Muise v. GPU, Inc., 332 N.J. Super. 140 (App. Div.

2000). This liability can attach even if the utility is in compliance with applicable regulations (which are quoted in the opinion) and all the terms of its tariffs. Id. at 166-169. See also Underwriters v. Public Electric, 459 N.J. Super. 436 (App. Div. 2019)(expansive view of damages available to homeowners due to utility outage caused by negligence). NJNG's claims of a potential loss of service are simply not credible. Its witnesses disavowed them on cross-examination and it makes no sense that the company would voluntarily expose itself to such liability.

NJNG's claims of need and of icing "issues" are not credible. They cannot justify the proposed regulator. At the very least, the BPU's finding that the NJNG witnesses were "credible" is arbitrary and capricious and not based on a review of the entire record. See In Re Proposed Quest Academy Char., supra, 216 N.J. at 386.

4. The BPU Decision And Initial Decision Are Fatally Wrong About The Application Of New Jersey's Climate Law To This Proceeding (Argued Below: Ha105)

The proposed regulator lacks any merit whatsoever, when carefully considered on its own, as we have just demonstrated. The current regulator arrangement is reliable, efficient and safe. The current regulator has a remaining useful life of at least fifteen to twenty years. The company's claims of potential adverse effects from the continued operation of the existing regulator are comically overblown and lack the

most basic credibility.

All of this is true. But the proposed regulator is particularly indefensible when considered against New Jersey's forward-looking climate change policy, as embedded in the Clean Energy Act, the Global Warming Response Act, the 2019 Energy Master Plan and the "80x 50" Report," issued on October 15, 2020.

We begin our discussion by again noting that NJNG has steadfastly refused to reconsider this proposal against the State's energy and climate change policy. Holmdel made two motions to compel this reconsideration and the court denied both motions, quite erroneously. No matter the precise procedural framing of those motions, the state's policies apply to this proceeding. We will first examine each of these components of the state's energy policies, but then consider them as a whole, for that is how they are intended to function. And so analyzed, those policies also mandate that the NJNG petitions be denied. The BPU and ID ignored these extensive legal requirements.

We also recognize that the merits or wisdom of the State's climate policies are not for this court to decide, and we do not argue otherwise. Those matters are for the Legislature, the Governor and the relevant agencies to implement. The climate laws, however, include a very clear and unambiguous requirement that the Energy Master Plan be applied "to

the maximum extent practicable” to proceedings including this one. The ID and the BPU Order explicitly declined to comply with this requirement, and the reasons for this violation are simply wrong. Our extended discussion of the State’s climate laws and the Energy Master Plan and other reports are to show that the policies and the statutory command violated here are not some casual wishful thinking that might come to pass at some future date, and might not at all, as NJNG argues, but a comprehensive set of plans to address an existential problem of our time with urgency.

A. The Clean Energy Act

In 2018, the Clean Energy Act was amended to impose specific annual reductions in natural gas usage in the state. N.J.S.A. 48:3-87.9 now reads in relevant part:

a. No later than one year after the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), 1 the Board of Public Utilities shall require each electric public utility and gas public utility to reduce the use of electricity, or natural gas, as appropriate, within its territory, by its customers, below what would have otherwise been used.

Each natural gas public utility shall be required to achieve annual reductions in the use of natural gas of 0.75 percent of the average annual usage in the prior three years within five years of implementation of its gas energy efficiency program.

[N.J.S.A. 48:3-87.9, emphasis added.]

The import of this part of the Clean Energy Act is that NJNG and other natural gas utilities must make measurable progress in reductions,

immediately.

B. The Global Warming Response Act

The Legislature enacted the GWRA in 2007 in order to help curb global climate change by establishing goals to reduce emissions of greenhouse gases in the State: to 1990 emissions levels by the year 2020, and to 80 percent below 2006 levels by 2050. L.2007, c. 112, codified at N.J.S.A. 26:2C-38, et seq. As amended in 2019, the Legislature found among other things that

[I]t is in the public interest to establish a greenhouse gas emissions reduction program that includes a comprehensive strategy to reduce short-lived climate pollutants and to limit the level of Statewide greenhouse gas emissions, and greenhouse gas emissions from electricity generated outside the State but consumed in the State, to the 1990 level or below, of those emissions by the year 2020, and to reduce those emissions to 80 percent below the 2006 level by the year 2050.

[N.J.S.A. 26:2C-38, emphasis added.]

C. The “2019 New Jersey Energy Master Plan: Pathway To 2050”

The 2019 Energy Master Plan sets a concrete comprehensive set of programs and objectives to achieve the reductions set by the Clean Energy Act and the Global Warming Response Act. We set forth below extensive quotations from this EMP because NJNG has repeatedly misrepresented the plan and its application to these petitions. An extensive portion of this plan is at Ha438; references to this exhibit are to the pages in the EMP itself as opposed to the pagination of the exhibit.

The heart of the error by the ID and the BPU Decision is that the Legislature has directed the maximum application of and compliance with the EMP as a matter of law. N.J.S.A. 52:27F-15b declares that it is "the intention of the Legislature that the actions, decisions, determinations and rulings of the State Government with respect to energy shall to the maximum extent practicable and feasible conform to the energy master plan adopted by the Department pursuant to section 12 of this act C N.J.S.A. 52:27F-15b]...." (Emphasis added.) As this is a matter of law, the BPU is not entitled to any deference.

That is not wishful thinking, it's a legal commandment. Specifically, this case ended in an "action, decision [and] determination and ruling[] of the State Government [the BPU] with respect to energy. "The 2019 EMP must be applied "to the maximum extent practicable and feasible."

The first thing to note about the 2019 EMP is that it is emphatically and intentionally unlike any energy master plan before it.

There is near unanimous scientific consensus that the global threat of climate change is grave and that it demands swift local action and focused state leadership. However, there is also evidence that New Jersey's current trajectory and efforts will be insufficient to reach the goals we have established to address climate change.

In response, New Jersey has developed a new Energy Master Plan (EMP) that encompasses a dramatically broader scope than any previous New Jersey EMP. [Ha447-448, Holm-18 at 11-12, emphasis added.]

Here are the specific goals that apply to natural gas usage:

Reduce Energy Consumption and Emissions from the Building Sector

4.1 Start the transition for new construction to be net zero carbon

4.1.1 Electrify state facilities

4.1.2 Partner with private industry to establish electrified building demonstration projects

4.1.3 Expand and accelerate the current statewide net zero carbon homes incentive programs for both new construction and existing homes

4.1.4 Study and develop mechanisms and regulations to support net zero carbon new construction

4.1.5 Develop electric vehicle-ready and demand response-ready building codes for new multi-unit dwellings and commercial construction

4.2 Start the transition to electrify existing oil-and propane-fueled buildings

4.2.1 Incentivize transition to electrified heat pumps, hot water heaters, and other appliances

4.2.2 Develop a transition plan to a fully electrified building sector.
[Ha442, HOLM-18 at 6. (emphasis added)]

5.4 Maintain existing gas pipeline system reliability and safety while planning for future reductions in natural gas consumption

5.4.1 Develop a planning process to quantify and analytically assess the need for future expansion of the gas system and take appropriate action

5.4.2 Instruct gas public utilities to propose and adopt non-pipeline solutions when seeking expansion or upgrade of the distribution system

5.4.3 Evaluate and support innovative efforts to decarbonizes the state's energy system, and perform a study of regulatory and programmatic mechanisms that support, incentivize, or otherwise bolster the natural gas industry to determine if continued support aligns with state goals

5.4.4 Instruct gas utilities to identify and prioritize the replacement of pipelines leaking methane

[Ha443, Holm-18 at 7 (emphasis added).]

As part of the development of the EMP, a careful analysis of the

economic costs of the plan and its feasibility was carried out.

To develop a quantitative and analytical pathway to achieve the dual goals of 100% clean energy and the GWRA emissions reductions requirements, NJBPU and NJDEP worked together with two contractors, Rocky Mountain Institute (RMI) and Evolved Energy Research (Evolved), to develop an Integrated Energy Plan for New Jersey.

The Integrated Energy Plan analyzed changes to New Jersey's economy-wide energy system (including the electricity, transportation, industry, and building sectors) that would allow the state to meet its clean energy targets, its emission reduction targets, and its energy needs while containing costs.

[Ha451-452, Holm-18 at 15-16.]

Several key findings emerged from the Integrated Energy Plan analysis:

New Jersey can meet the 2050 Global Warming Response Act requirement and 100% clean energy target by aggressively deploying existing technologies today and adopting new technologies as they become cost-competitive.

The costs to meet New Jersey's emissions and energy targets are small compared to total energy system spending and are offset by clean air and climate benefits.

Existing policies reduce emissions and are a strong start, but are not sufficient to meet 2050 targets. New Jersey must pursue further action to accelerate its energy system transformation.

[Ha451-452, Holm-18 at 15-16 (emphasis added).]

In other words, the decarbonization is achievable at relatively minor costs which are offset by lasting climate benefits.

The reductions in natural gas usage are accomplished in large part by a phased electrification of residences and commercial buildings. Installing natural gas in new construction must come to a halt by 2025, at this point, less than two years from now. This is encompassed in Goals 4.1 and 4.2, which we quoted at

length above.

There is no reason to believe that these strategies will not be implemented. NJNG will no longer be able to install gas into new buildings in less than two years. This translates into no increase in any usage on the 16-inch line operating at reduced pressures, and the current regulator is, by the company's own admission, able to handle current load and projected future load for the next three to four years, a year or so short of 2025. There obviously can be no significant increase in load on the 16-inch line before the 2025 moratorium on gas in new buildings takes hold. At that point, if not before, the need for the added capacity that the proposed regulator would serve will have vanished. The proposed regulator is not needed at all, let alone "reasonably necessary."

3. Beginning in 2020, a ten-year period of ascertaining how best to convert the remaining buildings served by natural gas is then followed by implementation that accomplishes significant reductions all the way to total decarbonization in 2050. Thus, by 2030, the state's incentives and experiments with the best way of electrifying buildings then served by natural gas will have borne fruit, and the conversion of those homes will be underway. At that point, obviously, the load on the 16-inch line will begin, if it has not already begun, a decrease down to zero or close to zero if there are any industrial customers that use natural gas as a feedstock. Given the number of buildings served by natural

gas, this conversion cannot be gradual or leisurely if the 2050 decarbonization goal is to be met. The recently issued DEP report, "New Jersey's Global Warming Response Act: 80x50 Report," which we discuss next, elaborates on the implementation of the final stage of decarbonization.

A critical part of the EMP's strategies is to cast a very skeptical eye on requests for natural gas infrastructure improvements, such as the proposed regulator:

Further, as New Jersey takes active steps to decarbonizes its energy sector, the gas public utilities must assess existing pipeline capacity and plan for a gradual reduction in system use safely, reliably, and affordably, including through the use of non-pipeline solutions. Finally, the gas public utilities must prioritize the repair or possible replacement of pipelines leaking methane.
[Ha450, Holm-18 at 14 (emphasis added).]

EMP Strategy 5. Decarbonize and modernize New Jersey's energy system

New Jersey's natural gas use declines to less than one-fifth of today's levels by 2050, likely reducing the need for gas distribution system expansion.
[Ha453, Holm-18 at 17,emphasis added.]

There is an even more pointed admonition in the EMP's detailed discussion of strategies:

Strategy 4: Reduce Energy Consumption and Emissions from the Building Sector

Seventy-five percent of residences in New Jersey are heated with natural gas; another 10% use oil or propane. Much of the infrastructure, technology, and assets used to power the building sector have decades-long life spans. Therefore, continuing to expand the gas distribution system and rely on fossil-fuel heating

for new construction and replacement of aging heating systems will lock in decades of continued emissions and risk financing what will become stranded assets. Delaying the transition might pose a missed opportunity to replace existing equipment with more efficient electric options. Further, the Integrated Energy Plan (IEP) modeling shows that a delay in building electrification will result in higher economic costs and limited flexibility to further reduce New Jersey's emissions or compensate for other sections that decarbonize more slowly than planned.
[Ha458, Holm-18 at 157, emphasis added; footnotes omitted.]

The State's climate laws and policies demonstrate that the proposed regulator is not reasonably necessary for the service of the public. NJNG is seeking to "lock in decades of continued emissions [from not just the regulator itself but from the new growth in natural gas consumption that it will make possible] and risk financing what will become stranded assets."

The integrated energy plan showed these goals are feasible and cost-effective:

Relevant Integrated Energy Plan Findings

- Electrification reduces annual costs by 50% in 2050, compared to retaining gas use in buildings, in order to meet emissions targets. Electrification is cheaper, despite low natural gas costs, because emissions targets require substituting a significant fraction of natural gas with carbon-neutral fuels. In the Least Cost scenario, carbon-neutral fuels are not required until the late 2040s and are primarily used in the electricity sector. In Variation 3, carbon-neutral fuel use starts earlier, and five times as much carbon-neutral fuel is required in 2050.

* * *

- Building electrification reduces total energy use. While building electrification increases electricity use, it reduces total energy needs because heat pumps are much more efficient than direct combustion of fossil fuels for heat.

[Ha461-461, Holm-18 at 160-161 (emphasis added.)]

Rather bizarrely, in an effort to evade the statutory command that this proceeding apply the EMP and its objectives and commands “to the maximum extent practicable and feasible,” NJNG offered the testimony of Robert Chilton, a paid consultant who was at one time the Director of the Division of Energy at the BPU. He had no role of any kind in the development of this EMP. His testimony consisted largely of two parts. First he claimed that the current EMP is merely advisory. Second, he claimed that implementing the EMP's natural gas decarbonization mandates will not be achievable, because, in his opinion, the electrical grid is incapable of handling the projected increase in electrical transmission and distribution load. Both opinions are directly contrary to governing law. In addition, both "opinions" are inadmissible as expert opinion on an ultimate legal issue.

Mr. Chilton testified,

The EMP is a long-range planning document that sets a vision, strategies and goals to achieve by 2050 a transition to a 100% carbon-neutral electric grid, and a 80% reduction in the State's carbon emissions, including a 75% reduction in natural gas consumption, with many important implementation details still to be worked out in future proceedings." Ha923-924, P-10 at 4:21-22, -5:1-3."The EMP's strategies and goals make it clear that the envisioned reduction in natural gas consumption will occur in a very gradual manner over several decades.... [Ha924, P-10 at 5:7-8.]

Mr. Chilton essentially repeats these claims at Ha928-930, P-10 at 9:1-11:5. He also implies that this EMP is in substance no different from previous plans, and that the current EMP will change overtime, in part because of changes in

gubernatorial administrations. Ha928-929, P-10 at 9:16-10:14. Our discussion above shows why this is patently untrue.

Described this way, the 231+ page EMP seems to have been hardly worth the trouble, according to Mr. Chilton. Of course, this is wrong, and NJNG's contempt for New Jersey's energy and environmental policies is unfortunate, to put it politely.

An expert is not permitted to offer an opinion on any question of law, and such an opinion is inadmissible. See, e.g., Estate of Campagna v. Point LLC, 464 N.J. Super. 153, 171-73 (App. Div. 2020), citing Kamienski v. State, 451 N.J. Super. 499 (App. Div. 2017). A witness may not offer testimony about the interpretation of a law or regulation. Ptaszynski v. Atlantic Health, 440 N.J. Super. 24, 37-38 (App. Div. 2016). Mr. Chilton's "opinion" on the interpretation of the state's climate laws is inadmissible.

The EMP is the law of the land, and binding on this proceeding according to law, and Mr. Chilton's invitation to treat it as merely advisory may well reflect a prior BPU Staff's attitude towards its legal obligations, but it has no place in today's climate crisis.

NJNG's second EMP argument is based entirely on misdirection and unsupported speculation; Mr. Chilton claims that the EMP sets a goal of electrifying buildings including modern air and ground-sourced electric heat pumps, and that this will take place over a "very long and gradual transition

away from natural gas." Ha938; P-10at 16:8-17:18. Yet he admitted that there is no such statement, or anything akin to it, in the EMP itself. This claim is rather based on the theory, personal to him, that the electric grid will not be sufficiently prepared for many years to come to accept the increased load that will result from transitioning the building sector away from natural gas. Ha940; P-10, 18:1-19:2; 6T39.18-45.7. Mr. Chilton and the company do not and cannot cite to any provision of the EMP or anything else to support this utter speculation. Mr. Chilton repeated this speculation at the hearing, but still offered no evidence in support.

Mr. Chilton's claims that the electrical grid is not able to handle the increased load created by the EMP's decarbonization mandates are also inadmissible. These are decisions entrusted by law to the BPU. Speculation is personal to Mr. Chilton and he did not identify any particular standard by which he was measuring the state of the grid and its sufficiency to meet increased electrical demand from decarbonization. "A standard which is personal to the expert is equivalent to a net opinion." Taylor v. DeLosso, 319 N.J. Super. 174, 180 (App. Div. 1999) (citing Crespo v. McCartin, 244 N.J. Super. 413, 422-23 (App. Div. 1990)). Therefore, expert testimony is admissible only if it is prefaced by testimony upon which the finder of fact could find that "the consensus of the particular profession involved recognized the existence of the standard defined by the expert." Ibid. In short, the net opinion rule is “

prohibition against speculative testimony.” Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013). The ID failed to examine Mr. Chilton’s testimony according to this standard.

The BPU and this court are obligated to reject any testimony which speculates that the BPU will fail to fulfill its duties.

The EMP's extensive analysis of New Jersey's electric transmission and distribution systems demonstrates that through an impressive number of strategies, including increased use of renewables and distributed generation the grid will be able to handle the energy demand that will no longer be met by natural gas.

Mr. Chilton correctly notes that the EMP targets new construction and conversion from existing oil- or propane-fueled buildings and buildings with electric baseboard heating. He also correctly notes that the EMP directs that existing buildings with natural gas service should be retrofitted beginning in 2030, as we set forth above. NJNG-10 17:1-18. 6T46.6-48.19.

All this disproves Mr. Chilton's speculation that the transition away from natural gas is some "long range" wishful thinking or "very gradual" process. To the contrary, the EMP sees a process that begins now, ends new installations in buildings in less than three years, and rapidly accelerates reductions at least by 2030, in just eight years. In addition, the 80x50 Report specifies a very aggressive schedule: "To support a steady conversion of the building inventory,

legislation or BPU directives could be pursued to meet the building conversion rates in the 2019 EMP of 22% conversion by 2030, 64% by 2040 and 90% by 2050." Ha119.

If approximately 10% of New Jersey residences use propane and oil heat, and the EMP and the 80x50 Report target a 22% conversion by 2030, then 12% of the conversions are existing natural gas or baseboard electric heat. The 80x50 Report notes:

By 2050, the installed base of electric high-efficiency alternatives for space heating and hot water will reach approximately 90% under the least cost scenario of the 2019 EMP. Since these types of equipment have long service lives, sales of new heating and hot water units must shift rapidly to the new technologies, reaching approximately 75% of total sales by 2030. And an "aggressive conversion" must begin no later than 2030. [Ha140.]

Moreover, as noted above, there are very few residences in NJNG's territory that use propane or oil heat. Ha140-141.

This means that NJNG must attain reductions in natural gas usage by halting installations in new construction, beginning retrofitting residences and commercial buildings immediately, not until 2030 or later. Avoiding natural gas installations in new construction doesn't reduce gas consumption but merely avoids a further increase.

Putting together the Clean Energy Act, the Global Warming Response Act, the EMP and the 80x50 Report, these are conclusions that cannot be responsibly disputed. If we are to meet the decarbonization objectives, natural

gas distribution companies such as NJNG must begin gas consumption reduction strategies immediately.

When the state's energy and climate change policies are considered with the basic facts about the current regulator, the lack of any need for the proposed gas combustion regulator is exponentially reinforced. The current regulator was installed in 2012 and as of the 2020 hearing it still had fifteen to twenty years of useful life remaining. It is safe, reliable and emits no real greenhouse gases and consumes no natural gas. By 2030, when the conversions away from natural gas must accelerate, the current regulator will still be operating as a safe and reliable part of an infrastructure that must now serve an accelerating reduced load. It will have at least five and perhaps ten or more years of useful life.

By 2030 NJNG must have achieved a 22% reduction in natural gas consumption, with "significant numbers of replacement beginning in 2030." By 2040 NJNG must have achieved a reduction of 64%. By 2030, at the absolute latest, then, the need for the proposed regulator and its capacity to serve a load substantially higher than at present will have long since vanished entirely, and, indeed, the 16-inch transmission line will become a candidate for stranded asset treatment.

But the most glaring mistake in the NJNG argument (and Mr. Chilton's testimony), and the BPU's acceptance of it, is that they are diversionary and irrelevant. Whatever the future may hold, the Clean Energy Act requires now

that decisions such as the ones rendered in this case “shall to the maximum extent practicable and feasible conform” with the EMP, now, not just at some unknown time in the future. N.J.S.A. 52:27F-15(b)(emphasis added). There is simply no discretion to ignore this mandate.

D. "New Jersey's Global Warming Response Act: 80x50 Report: Evaluating Our Progress And Identifying Pathways To Reduce Emissions By 80% By 2050"

A policy issuance occurred as the hearings in this case were underway. On October 15, 2020, the Department of Environmental Protection issued a report entitled, "New Jersey's Global Warming Response Act: 80x50 Report: Evaluating our Progress And Identifying Pathways to Reduce Emissions By 80% By 2050." (80x50 Report). Ha108. We requested that the BPU take judicial notice of this report. N.J.R.E. 201(b)(1)-(3); N.J.R.E. 803(c)(8). We briefed this report to the ALJ and BPU, but both ignored it. Ha105.

This report was mandated by the GWRA and states quite unequivocally that New Jersey needs even more aggressive decarbonization measures than those in the EMP if it is to meet the 80% reduction objective by 2050. In its introduction, the report says:

New Jersey is especially vulnerable to the adverse effects of climate change due to its coastal location and population density. Minimizing these risks requires immediate, decisive, long-term commitments across all levels of government and sectors of the economy to facilitate the steep reductions of greenhouse gas (GHG) emissions that are necessary to protect New Jersey's economic, social, and environmental vitality. Recognizing the need for coordinated action in the public and private sectors, the New Jersey Global Warming Response Act (L. 2007, c. 112;b

L. 2018, c. 197) (GWRA) directed the New Jersey Department of Environmental Protection (DEP), in collaboration with other state agencies, to develop plans and make recommendations for reducing emissions of climate pollutants, represented throughout this report as carbon dioxide equivalent emissions or CO₂e, to 80% below their 2006 levels by the year 2050 (known as the "80x50" goal).
[Ha113, emphasis added; footnote omitted.]

The report notes the critical role played by reducing natural gas consumption in the buildings sector:

Residential and commercial buildings account for the second largest share (26%) of the state's GHG emissions, accounting for 24.6 MMT CO₂e in 2018. In order to achieve the 80x50 goal, emissions from the residential and commercial building sectors must be reduced by 89% to 2.7 MMT CO₂e by 2050. Space and water heating account for the majority of emissions from these sectors, with 87% of residential buildings and 82% of commercial buildings relying predominantly on natural gas.
[Ha118, emphasis added.]

This report urges even more rapid action than the EMP itself.

Meeting the 80x50 goal will require very substantial reductions in GHG emissions in the transportation, residential and commercial, and electric generation sectors, given the predominant contributions of those sectors to New Jersey's total emissions.
[Ha115, emphasis added.]

Thus, the 80x50 Report sets the progression of reductions in natural gas consumption: in just ten years, a reduction of 22%, in another ten years, fully 64%. The report repeats and elaborates on the EMP's strategies we set forth above:

To achieve New Jersey's 80x50 goal the building sector will need to phase out reliance on fossil fuels and aggressively pursue electrification of heating, cooling and appliances.

...

To achieve the 80x50 GHG reduction target, the state should prioritize the creation of a building electrification roadmap paired with incentives that initially target buildings currently relying on propane and heating oil for space and water heating and inefficient electric resistance baseboard heating. Additionally, the state should mandate that all new construction is net zero carbon no later than 2025 in order to alleviate dependence on fossil fuels for building heating and cooling and to avoid the cost of stranded assets. [Ha132, emphasis added.]

And New Jersey is a profligate user of natural gas:

A recent EIA survey (USEIA, 2015) of the mid-Atlantic region's residential sector (New York, New Jersey and Pennsylvania) estimated natural gas end-uses to be largely space heating and water heating (Figure 2.2). According to most recent Residential Energy Consumption Survey, New Jersey households, on a per-household basis, are the highest consumers of natural gas used in residential heating in the country (in Btu per year), (USEIA, 2015). Three out of four New Jersey homes use natural gas as their primary home heating fuel (USEIA, 2019). Ha138.]

The report addresses the "low hanging fruit" from oil and propane. Ha140-141.

As we noted above, there is very little opportunity to achieve realistic reductions in Monmouth County because there are very few such buildings.

The costs of not moving aggressively are substantial.

Any delay in the building electrification transition will lead to stranded assets, higher costs and limited flexibility to further reduce emissions. This is because the infrastructure necessary to support consumption of fossil fuels in buildings, including consumer items such as boilers and appliances, as well as the underlying utility infrastructure, has decades of anticipated lifespan. [Ha144, emphasis added.]

No error in the ID and BPU Decision is more consequential and less defensible than the cavalier treatment of New Jersey's climate law. The ID gives

a back hand acknowledgment that "the BPU must consider the directives of the EMP." Ha81. But the ID does nothing of the sort. Early in the OAL proceedings, Holmdel filed a motion to compel NJNG to reconsider the petitions in light of the EMP. The ALJ denied the motion in an order dated June 11, 2020, erroneously concluding that the "definite regulations and standards must be put in place before any reliance on the general declarations within the EMP and Executive Orders 100 can impact these proceedings." Ha81. Thus, the contents of the EMP and the governing law were transformed in the space of one page from "mandates" that the BPU must consider to "general declarations." There is nothing in the law or the EMP itself to support such an erroneous supposition.

The ID and BPU Decision compounded this error by concluding that the ALJ's June 11 order was "the law of the case." Ha84, Ha54. The law of the case "doctrine is not an absolute rule as' the court is never irrevocably bound by its prior interlocutory ruling[.]" Jacoby v. Jacoby, 427 N.J. Super. 109, 117 (App. Div. 2012). (citations and internal quotation marks omitted). "[T]he law of the case concept is merely a nonbinding decisional guide addressed to the good sense of the court in the form of a cautionary admonition against relitigation when the occasion demands it." Id. at 411 (quotation omitted). The doctrine is not mandatory and need not be mechanically applied in all cases. State v. King, 340 N.J. Super. 390, 400 (App. Div. 2001). When applied to interlocutory

orders, the doctrine is discretionary and to be applied flexibly in order to serve the interests of justice. Ibid. The BPU Order erroneously states that the law of the case doctrine is applied unless the first decision was clearly erroneous. The ALJ's ruling on Holmdel's motion was clearly erroneous, because it held that further rulemakings were required, but the BPU Decision misstates the law.

That doctrine has no place when it concerns a matter of significant state policy and a statutory mandate. The court owes no deference at all to the BPU - which is plainly wrong -- on these legal issues.

NJNG, the ID and the BPU repeatedly cite and refer to the utility's statutory obligation to provide "safe, adequate and reliable service," N.J.S.A. 48:2-3. But the statute must be read in full:

The board may, after public hearing, upon notice, by order in writing, require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State, and including furnishing and performance of service in a manner which preserves and protects the water quality of a public water supply, and to maintain its property and equipment in such condition as to enable it to do so.
[N.J.S.A. 48:2-3, emphasis added.]

The Legislature has, therefore, directed that while system reliability is important, protection of the environment is just as important. The ID refers to this section three times, Ha66, Ha83, (twice) and Ha92, and the BPU Decision twice, Ha45, Ha55, but neither ever includes the underscored language.

Moreover, N.J.S.A. 40:55D-19 sets forth a process by which a petitioning

utility must engage in a searching consideration of alternatives. The EMP simply overlays those subjects in fulfillment of the state's energy and climate policies.

In In Re Public Service Electric and Gas Company, 35 N.J. 358, 377 (1961), our Supreme Court stated held that "[a]lternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity." This means that this court and the BPU must consider "alternative sites," "alternative methods," the "comparative advantages and disadvantages" and the "costs" of the proposed regulator as compared to any feasible alternative, including doing nothing. The EMP now mandates that an "alternative method[]" involving natural gas infrastructure must include doing nothing. These petitions seek an increase in natural gas infrastructure and creation of a potentially stranded asset, contrary to the state's energy and climate policy. NJNG has not ever tried to assess the impact of the EMP on this proposal, in plain violation of the commands of In re Public Service, 35 N.J. at 377, and In Re Monmouth Consolidated Water Co., 47 N.J. 251, 259-260 (1966).

While the company doesn't come right out and say this, the only conclusion that follows from this is that NJNG is free to just ignore the EMP unless and until it is specifically ordered to actually do something. The obvious response to this claim is that in this proceeding, it can and should be ordered to

do something, in implementation of the EMP: the petitions should be denied, and NJNG should continue the existing regulator arrangement, which is safe, reliable, efficient, has a long useful life and ample safeguards and has no climate change impacts at all.

We note that at the hearing, NJNG witness Mr. Chilton was especially evasive on this point. He refused, multiple times, to answer a simple question: does the EMP mean that NJNG doesn't have to do anything unless and until it is specifically ordered to. 6T30.9-33.9. His evasions are not credible.

5. The Proposed Regulator Station Is Not A Reliability Project, But A Costly Stranded Asset In The Making (Argued Below: Ha105,106)

NJNG argued, and the ID and BPU Decision accepted, that the regulator station is not a “capacity expansion” project, but a “reliability” project. Mere nomenclature can not defeat the laws of physics. NJNG’s argument may have some validity as applied to the 16-inch pipeline, but not the regulator. NJNG claimed that it had to install the 16-inch pipeline in order to permit in-line inspection. That’s a valid reliability claim, because inspections are for safety and reliability purposes. But that’s where the claim ends.

We have demonstrated by the cross-examination of NJNG’s own witnesses that the current regulator is safe, reliable and offers no risk of harm to the NJNG system or the area. The 16-inch pipeline was installed to replace a 10-inch pipeline. Common sense compels the conclusion that a 16-inch pipeline can transport significantly more natural gas at comparable pressures than a 10-

inch line.

The proposed regulator, the subject of this proceeding, is a capacity expansion project, as the laws of physics dictate. If approved, the proposed regulator will permit the 16-inch line to be operated at maximum allowable operating pressures in excess of 700 psi as opposed to the current operating pressures of 425-450 psi. This would enable the 16-inch line to transport significantly more natural gas. That's an expansion of capacity. (NJNG's own witnesses conceded, as set forth above, that there is absolutely no showing that there is any need to transport volumes of gas in excess of the volumes presently depressurized by the current regulator.)

In our discussion of the state's energy and climate change policies and their impact on these petitions, we have quoted several instances in which the EMP and the 80x50 Report express concern about the potential for utility infrastructure to become "stranded assets." NJNG's Mr. Chilton defined stranded assets:

[MR. DICKSON] Q. Now, the statement in the middle of this, that "One of the things the State must consider is how to evaluate and balance requests to expand the transmission of distribution systems versus concerns about stranded assets," would you give us your understanding of what is meant here by "stranded assets"?

[MR. CHILTON] A. Well, I mean, I guess I'll answer two ways. Really, the only sort of formal definition of stranded costs in any of the BPU's rules or rule makers that I'm aware of, it concerns back to when the electric distribution system was expanded 20 years ago, where that concerned generating assets which were either divested, sold off by utilities who were no longer in the generation business, or they were spun off into an unregulated affiliate. And the stranded

cost in that instance, as defined in the Discount and Energy Competition Act, dealt with the -- any remaining costs on the utility's box (sic - books), that being the difference, the deficit in the market value that the transfer or sale took place and the remaining book value of the asset. So that's really the only formal definition. So once those generating assets were no longer part of the utility's plant and service, there was a remaining unamortized cost that was above market, essentially. So in that context, my interpretation of this is there's a point at which, in a good -- I think of it in sort of real-life examples. If there were a build-out, a system expansion into an area -- let's say there was a whole area that was served by oil and there was a major, you know, system expansion out there, and -- to serve those customers, and let's say ten years later that whole area was electrified, and so that gas superstructure was no longer needed, theoretically that's a stranded cost. It's a piece of equipment that's no longer needed, and it's -- there's still some unamortized costs on the books of the utility. So that would be my general understanding of the meaning of the words in that context.

[6T55:6-25-56:1-20, emphasis added.]

The company's claim for the proposed regulator's need is based entirely on the spurious "icing" issues. In neither petition nor in any of its witnesses' testimony has the company ever claimed that the proposed regulator is needed to serve increases in gas service that can not be served by the current regulator. The company refused to provide any discovery on the volumes of gas moved through the 16-inch line now and into the future, or the area meant to be served. The projected increases in load are less than one percent a year. The state's energy and climate policies mandate immediate and continuing decreases in natural gas consumption now and into the near future until there is 100% decarbonization by 2050. It is, therefore, no overstatement that the proposed regulator would immediately be a stranded asset as soon as it were installed and

commissioned. It would be well in excess of what is needed now and into the future to provide safe and adequate service consistent with the state's environmental policies.

In the proceedings below, NJNG refused to commit to not seeking recovery of the costs of the proposed regulator from ratepayers, and so at that point, we can expect a request to the BPU that the costs of the immediately useless gas combustion heated regulator be recovered as a stranded cost. We remind the BPU that NJNG purchased this combustion regulator in a prohibited sole source non-competitive manner. To quote Mr. Chilton, it will be "a piece of equipment that's no longer needed, and it's -- there's still some unamortized costs on the books of the utility."

The simplest way to avoid burdening the ratepayers with a stranded cost is to avoid incurring the cost in the first place. The petitions must be denied.

6. The BPU Arbitrarily And Capriciously Approved NJNG's Failure To Consider Alternatives (Argued Below: Ha106)

Construing a predecessor to N.J.S.A. 40:55D-19, our Supreme Court stated: "[a]lternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity." In re Public Service Electric & Gas Co., supra, 35 N.J. at 377 (emphasis added). See also In Re Monmouth Consolidated Water Co., 47 N.J. at 259-260. These alternatives include not just doing nothing by continuing the current regulator, but giving meaningful

consideration to a superior heat source, a catalytic heater,

The BPU Decision states that "the record indicates reliability issues are likely to occur with a catalytic heater." Ha45, citing Ha91. The record indicates no such thing. NJNG's claims of "issues" with catalytic heaters are just like its claims about the "icing issues" for the current regulator, the product of highly creative lawyers' drafting as opposed to actual fact. According to its pre-filed written rebuttal testimony, NJNG did in fact install five catalytic heaters on regulator stations and experienced problems with them. Here is what the panel's written testimony said:

Between 2008 and 2010, NJNG installed 5 catalytic inline heaters at various regulator stations throughout our system. Within the first two years of operation, we had approximately 6 catalytic heater panels internal to the units experience major failures for various reasons at two specific locations, some multiple times. Within four years of operation, we were forced to replace all 32 catalytic heater panels at these very same locations, as well as three additional panels at a third location. In addition, at two of three location described above, we have also experienced several electrical failures related to wiring, thermocouples and connectors.

[Ha832, P-8 at p. 26:6-14.]

These exaggerations don't match the facts on their face. First, NJNG does not claim that there were any service outages attributable to these catalytic heaters, so the only inference is that there were none. Second, it is clear that NJNG experienced no identifiable problems at two of the locations. Third, there is no attempt to describe the problems in any detail, so if the problems were truly bad, we certainly would have been told more by NJNG's lawyers. Fourth, at one

of the five locations, the only apparent problem was a failure of just two panels, so nearly all of the identified problems seem to have occurred at just two locations. Fifth, NJNG obviously has ample experience in operating and maintaining catalytic heaters (which the company confirmed in the hearing, 2T89:22-25,-90:1-25,-91:1-11; has experienced no panel failures since 2012 (“[w]ithin four years of operation,” which began in 2008); and only unspecified and unsupported claims of “electrical failures.” Whatever may have been those “electrical failures,” NJNG has never claimed that they were serious, costly or in any way other than normal operation and maintenance issues. (“There was a malfunction aboard the plane” can mean anything from a broken seatback to a fatal crash.) Given NJNG's multiple exaggerations on its “icing” claims, it does not deserve any benefit of the doubt here, and it has the burden of proof. And discovery and cross-examination at the hearing soundly defeated NJNG's inaccurate written testimony. (NJNG refused to answer a number of Homdel's discovery requests.)

To begin with, a catalytic heater was technologically feasible and in the same range of expense:

Q. I don't recall if I actually asked this question. I think you referred to it, Mr. Sanders, in one of your answers. It would be technologically possible and feasible to use a catalytic heater at this 960 Holmdel Road regulator station?

A. Technically speaking, yes.

Q. Thank you.

[2T84:12-19.]

Q. And as you sit here today, you have no idea whether a catalytic heater configured for this particular regulator station would cost more or less than the one you purchased from CWT?

MR. WYCKOFF: I don't know that for sure because we haven't discussed that. But in our past experience we believe that a catalytic heater is compatible, if not slightly more than, the CWT-type heater.

Q. And that experience is the five catalytic heaters that you discuss in our rebuttal testimony?

MR. WYCKOFF: Yes.

[2T80:12-25, -81:1-25, -82:1-12.]

The witnesses then conceded that the "problems" they vaguely discussed in their lawyer curated rebuttal testimony were not so serious, after all.

Q. Now, we'll be talking about catalytic heaters soon, but I want to ask these questions in the context of this point. Your rebuttal testimony, P-8, and some of your discovery responses contain a discussion of problems you've experienced with catalytic heaters on your system, specifically five heaters that were installed on your system; is that correct?

MR. SANDERS: Can you point to where--this is Kraig Sanders. Can you point to your-- to our statement in direct?

Q. I can point to it on rebuttal.

MR. SANDERS: Okay. Rebuttal. Thank you.

Q. The question starts at the bottom of page 25, line 20, goes over to page 26, line 17. If you want to read that to yourself before you answer my questions, please do so and tell me when you're ready.

(Witness reviews document.) MR. SANDERS: Yes. I have it.

Q. The top of page 26, line 1, the testimony says, "Moreover, the Company did consider catalytic heater for this station." Did I read that correctly?

MR. SANDERS: Yes.

Q. And the last line--two lines of this answer, lines 16 and 17--well, they start at line 14, "Given these problems, installation of a catalytic heater does not comport with the purposes of the regulator station, which is to provide safe and reliable gas service to New Jersey Natural Gas customers, and the Company has made the decision to no longer use this type of heater. "Now, My question to you is, you didn't really seriously consider a catalytic heater for this statement, did you?

[Colloquy omitted.]

MR. WYCKOFF: Yes, we--no, we considered the use of a catalytic heater during the design of the station, but for a number of reasons, which are in

this answer to discovery, we ruled that out as a viable option for installation.

BY MR. DICKSON: Q. Going to the statement on lines 16 and 17, the Company has made the decision to no longer use this type of heater. That decision was made before you began to design this regulator station, was it not?

MR. WYCKOFF: Actually, it was around the same time that we decided not to use it anymore, because we had experience and issues with them, for those that had been installed just previous to the design of this station, and that is what we were referring to. So in the last line, I guess, depending on your interpretation, as of today, we have made that decision, and it was made around the time, give or take, of when we were designing this regulator station.

[2T71:16-25, -72:1-25, -73:1-25, -74:1-11.]

Q. Okay. Thank you. My question, however, was in designing this particular regulator station, the one that was to be sited at 970 Holmdel Road. You did not get in touch with that supplier of catalytic heaters, the ones on your system, and indicate to them that you would be interested in getting a quotation from them with specifications such that it would avoid the problems that you had previously experienced; you did not do that, did you?

MR. WYCKOFF: No, because we were having these issues at the same period of time, so we were not confident that that could be done and they could provide a reliable product because they could not even determine what the issues were that Kraig [Sanders] mentioned, so we basically simply did not want to use them because of those ongoing issues. We did not ask them for a quotation, no.

[2T:80:2-19 (emphasis added).]

Here it is important to recall that the heater was purchased in late 2012 or January 2013, so that's when NJNG decided that it would not consider a catalytic heater. N.J.S.A.40:55D-19 and the applicable cases do not include any time limitations on the requirements of considering alternatives.

Q. Okay. And who is that supplier, just for the record?

MR. SANDERS: Bruest.

MR. WYCKOFF: Are you talking about the manufacturer, sir, or the local sales representative?

Q. The manufacturer, please.

MR. WYCKOFF: It would be Bruest Heaters, B-R-U-E-S-T, is the name of the manufacturer.

Q. B-R-U-E-S-T?

MR. SANDERS: Yes, sir. I believe so.

Q. Okay. Thank you. Now, they're not the only manufacturers for catalytic heaters for natural gas regulators, are they?

MR. SANDERS: No, they're not.

Q. In fact, there are a number of other manufacturers who make heaters for natural gas regulators, correct?

MR. SANDERS: Yes.

Q. In the process of designing this particular station at 970 Holmdel Road [sic], you didn't make any effort to contact any other suppliers or manufacturers of catalytic heaters to see if they were interested in supplying the heater for this; isn't that correct?

MR. SANDERS: Yes. That is correct.

Q. And you didn't make any attempt to talk to other natural gas companies that had catalytic heaters to inquire if they had catalytic heaters on their system that they considered reliable, correct?

MR. SANDERS: Not that I recall.

Q. And as you sit here today, you have no idea whether a catalytic heater configured for this particular regulator station would cost more or less than the one you purchased from CWT?

MR. WYCKOFF: I don't know that for sure because we haven't discussed that. But in our past experience we believe that a catalytic heater is compatible, if not slightly more than, the CWT-type heater.

Q. And that experience is the five catalytic heaters that you discuss in your rebuttal testimony?

MR. WYCKOFF: Yes.

[2T80:12-25, -81:1-25, -82:1-12.]

Q. And the five heaters that you have installed on your system were installed between 2008 and 2010, correct?

A. Yes. That's correct.

Q. You described them as in-line heaters. How is that technologically different than the CWT heater that you have purchased for this unit?

A. I think that is also considered an in-line heater.

Q. Now, on these five catalytic heaters, you described that there were heater panels that failed. Can you tell me how many panels there are on each of these heaters?

A. I believe there are eight panels.

Q. You'll see further down in the answer that you had to replace all 32

panels, 32 panels at the very same location. There were two locations where these problems were concentrated, correct?

A. Yes. So that would be 16 panels. Each unit has 16 panels that would that would be-- yes.

Q. And then there was three additional panels that failed or needed to be replaced -- let me rephrase. There were three additional panels that needed to be replaced at a third location; is that correct?

A. Yes. That's correct.

Q. And then at two of the three locations described you have experienced electrical failures related to wiring, thermalcouples, and connections, correct?

A. Yes. That's correct.

Q. Now, do I understand from this testimony, then, that you really haven't had those kinds of problems or any material problems at two of these catalytic heater locations?

A. Not to this degree, no.

[2T83:1-25, -84:1-11(emphasis added).]

And the manufacturer covered nearly all of the cost of the failures, and there were no service outages:

Q. Subpart A, the answer you were just referring to, October 2019, two additional panel failures. How many panels were involved?

A. Two panels.

Q. Two panels. Thank you. The answer to subpart D you state that "The parts associated with the panel failures and replacement were covered by the manufacturer." Did I read that correctly?

A. Yes.

Q. And how many of these panel failures and replacements were covered by the manufacturer; all of them that you've identified or some subpart?

A. The 32 panels were covered. And what I mean by that is they were either replaced and/or rebuilt to our specifications.

Q. So all of that--and when was that work completed, the manufacturer replacing or rebuilding? Do you know when that was completed? Was it done right away? Did it take years?

A. Within a year or so of the actual failures themselves-- the entire process took about a little over a year to replace the panels out. It wasn't a simple swap, so to speak. We--you know, we had to replace panels. We couldn't bring the heaters off line, so it was a process that took several months up to a year to replace all 32. We had spares that we put in service, et cetera. It was a little more involved than just swapping them

out.

Q. I understand. And so you kept the heater in operation and replaced the panels one by one, two by two so that the heater would stay in operation?

A. Yeah, dependent on the availability of the panels, obviously, has--the heaters, obviously, needed to be in operation at all times, and so the process was a little involved. We also had items that were being repaired and replaced, so there weren't-- it wasn't a simple reordering of 32 panels, so to speak, because there were other issues involved.

Q. Did the manufacturer cover labor costs associated with these repairs and replacements?

A. Not our labor and costs, because of their particular labor.

Q. And did the manufacturers coverage include the two panel failures in 2019?

A. No. No.

[2T87:25,-88:1-25, -89:1-21.]

In addition, timing defeats the company's unlawful refusal to consider a catalytic heater. The company's first application to the Holmdel ZB was filed on March 17, 2015, and by that time, NJNG had finished all of its real "problems" with catalytic heaters at two of its five locations. That application was denied on December 7, 2016, by which time NJNG had another year's nearly trouble-free experience with catalytic heaters. Ha413. NJNG filed its first petition on January 17, 2017. By this time, NJNG knew that N.J.S.A.40:55D-19 and the applicable cases required robust consideration of "alternative methods" such as a catalytic heater that would mitigate the adverse impact.

The company applied to the Holmdel ZB for the 960 Holmdel Rd. site on January 2, 2018, by which time NJNG had experienced at least three nearly trouble-free years' experience with catalytic heaters. As the company had filed a petition the previous year under N.J.S.A. 40:55D-19, it then knew that the

applicable law and cases required more consideration of "alternative methods" such as a catalytic heater that would mitigate the adverse impact than it had thus far conducted. At least from the time it filed the petition to the BPU for 960 Holmdel Road, then, NJNG had ample time, a year, to now give lawful consideration to adding another catalytic heater to its system at the proposed location.

7. The BPU And ID Erred As A Matter Of Law In Ignoring The Decisions Of The Holmdel Zoning Board And Accepted And Relied Upon "Expert" Testimony That Contradicted The Expert Findings Of The Holmdel Zoning Board (Argued Below: Ha106)

Among the factors that the BPU must consider under the statute is "the community zone plan and zoning ordinance, as well as physical characteristics of the plot involved and the surrounding neighborhood and the effect of the proposed use thereon." In Re Public Service Electric And Gas Co., 35 N.J. at 376-77.

Of course, the BPU does not possess any expertise in land use or zoning. This isn't meant as a criticism, but to note that the BPU's expertise lies elsewhere. This is not a simple area of the law; the leading treatise net of appendices is over a thousand pages long with additional material online. Cox and Koenig, New Jersey Zoning And Land Use Administration, 2022 Ed. The BPU is ill-equipped to judge close controversies on this factor.

As we have noted there were two separate proceedings before the Holmdel ZB, and that Board denied both applications with resolutions making

detailed findings of fact. The primary relief NJNG sought was a variance from the ordinance's requirement of one principal use per site, a very common provision aimed at controlling inappropriate over-development. See, e.g. Sun Co. Zoning Board, 286 N.J. Super. 440 (App. Div.) certif. denied, 144 N.J. 376 (1966). Consideration of a request for a variance is a complex process of considering both positive and negative criteria including the provisions of the municipality's Master Plan and periodic reexamination reports. A lead case is Medici v. BPR Co., 107 N.J. 1 (1987), which contains an extensive discussion of the overall framework and operation of zoning law on variances. (The Cox and Koenig treatise devotes 200 pages alone to the law and practice of variances.) Zoning ordinances are to be liberally construed in favor of the municipality. See e.g. State v. Township of Pennsauken, 160 N.J. 156, 171 (1999). On judicial review, a zoning board's factual determinations can only be reversed if arbitrary and capricious, primarily because, it is very commonly stated, local citizens serving on boards are more familiar with a community's characteristics than a reviewing court. See, e.g. Med. Center v. Princeton Tp. Zoning, 343 N.J. Super. 177, 198 (App. Div. 2001) citing Ward v. Scott, 16 N.J. 16, 23 (1954).

The ALJ and BPU ignored the ZB resolutions as probative and useful proof of the proposed NJNG regulator on the municipality's land use and master plan. There is nothing in any statute that supports this evasion.

NJNG offered the testimony of Christine Nazzaro-Cofone a planning expert, who had also testified at the ZB. (NJNG allowed that she could be referred to as Ms. Cofone.) Her testimony was that the NJNG applications should in fact have qualified for zoning variances. The ID relied exclusively on her testimony as regards the impact of the combustion regulator on Holmdel's land use ordinances, Pa86, in finding that her testimony was "undisputed" and that the combustion regulator "will not be incongruent with the existing structures and their uses." (The existing structures are an office complex and a cell phone tower.) The BPU Decision made the same mistake of law. Ha55.

The ID is manifestly incorrect in concluding that Ms. Cofone's testimony was "undisputed." Holmdel's expert on land use is the body charged by law with being the Township's expert on all applications to depart from the existing land use plan, namely, the Township Board of Zoning Adjustment. N.J.S.A. 40:55-70c; 40:55-70d. The Township ZB very much disputed her testimony and conclusions in its two resolutions of disapproval. It seems entirely logical that consideration and deference be given to the local land use boards in these cases, which, after all, are governed by a statute which is itself a provision of the Municipal Land Use Law. Unlike Ms. Cofone, the members of that Board of Zoning Adjustment all live in Holmdel, are very familiar with the uses in the town, the Master Plan and the zoning ordinances as well as prior decisions on variances. As a matter of law their knowledge and experience with Holmdel

Township is always superior to that of a paid expert such as Ms. Cofone. N.Y. SMSA, LP v. Bd. of Adjustment, 370 N.J. Super. 319, 331 (App. Div. 2004) (quoting Pierce Estates Corp. v. Bridgewater Twp. Zoning Bd. of Adjustment, 303 N.J. Super. 507, 514 (App. Div. 1997)). Just as importantly, their knowledge of and experience with Holmdel Township is superior to that of the OAL and its judges, and the BPU and its Staff, whose expertise lies elsewhere. The ZB's expertise, settled case law repeatedly and consistently holds, is superior to that of any reviewing court and by extension to an ALJ or the BPU. There is nothing in the statute that would support any claim that land use board's findings on the issues raised in the petition can be ignored in favor of paid experts. The ID and BPU Decision arbitrarily never mentioned or considered the Holmdel ZB's findings and conclusions. See, e.g., Fiore v. Consol. Freightways, 140 N.J. 452, 466 (1995) (court must read all parts of a statute together and not consider separate sections in a vacuum).

The zoning ordinance permits only one primary use on each site, and 960 Holmdel Road already has two: an office building and a cell phone tower. The proposed regulator would have been a third primary use. This is an issue of the permitted density of uses on any one site, a judgment call of the first rank. Ms. Cofone claimed that the proposed regulator station was no more intrusive or undesirable than the cell phone tower, and that in her opinion, the ZB should have approved the application. There are residences and a working vineyard

across the road. This is simply a matter of where to draw the line. No amount of testimony by a paid expert can overcome that Holmdel's ZB is entitled to due consideration and deference on these issues.

V. CONCLUSION

For the reasons given in this brief, Holmdel Township respectfully requests that the Decision of the BPU be reversed.

Respectfully submitted,

POTTER AND DICKSON

By /s/ Peter Dickson
Peter Dickson
Attorney for the Appellant,
Township of Holmdel

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-1582-22

IN THE MATTER OF THE PETITION	:	<u>CIVIL ACTION</u>
OF NEW JERSEY NATURAL GAS	:	
COMPANY FOR A DETERMINATION	:	ON APPEAL FROM A
CONCERNING THE HOLMDEL	:	FINAL AGENCY DECISION
REGULATOR STATION PURSUANT	:	OF THE STATE OF NEW
TO N.J.S.A. 40:55D-19 – 2017	:	JERSEY
PETITION	:	BOARD OF PUBLIC
	:	UTILITIES
and	:	
	:	BPU DOCKET NOS.
IN THE MATTER OF THE PETITION	:	GO17010023 & GO18111257
OF NEW JERSEY NATURAL GAS	:	
COMPANY FOR A DETERMINATION	:	OAL DOCKET NOS. PUC
CONCERNING THE HOLMDEL	:	01160-17 & PUC 17810-18
REGULATOR STATION PURSUANT	:	
TO N.J.S.A. 40:55D-19 – 2018	:	
PETITION	:	

BRIEF AND APPENDIX ON BEHALF OF RESPONDENT,
THE NEW JERSEY BOARD OF PUBLIC UTILITIES
Date Submitted: August 28, 2023

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant, the Township of Holmdel, appeals from the New Jersey Board of Public Utilities' (BPU) December 21, 2022 order granting Co-Respondent New Jersey Natural Gas Company's (NJNG) petition to construct a natural gas regulator station and associated equipment at 960 Holmdel Road in Holmdel Township, and finding that Holmdel's local land use law and any other ordinances, rules, or regulations promulgated pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 to -163, neither apply to nor preclude NJNG's proposed project. The BPU's finding that the proposed project is reasonably necessary for the service, convenience, and welfare of the public is supported by the record, is not arbitrary, unreasonable or capricious, and, thus, its grant of NJNG's petition should be affirmed.

Background

On March 17, 2015, NJNG filed an application with the Holmdel Township Zoning Board of Adjustment (HZBA) requesting two zoning variances and a site plan approval to construct a regulator station at 970 Holmdel Road which is located next to the site that is at issue in this appeal. (Aa414;

¹ Because they are closely related, these sections are combined for efficiency and the court's convenience.

Aa791).² On December 7, 2016, the HZBA denied NJNG’s application regarding the 970 Holmdel Road location. (Aa413; Aa792).³ Consequently, on January 11, 2017, NJNG filed a petition with the BPU pursuant to N.J.S.A. 40:55D-19, seeking a determination that the construction of the regulator station at 970 Holmdel Road is “reasonably necessary for the service, convenience, or welfare of the public, and that the zoning and land-use ordinance of the municipality and its county shall have no application thereto.” (Aa38; Aa792). That petition was transferred to the OAL as a contested case on January 23, 2017, and was assigned to Administrative Law Judge (ALJ) Elia A. Pelios. (Aa38). On April 3, 2017, Holmdel filed an unopposed motion to intervene, which was granted. (Aa38-39).

While that proceeding was pending, NJNG filed an application with HZBA on January 2, 2018, seeking use variances, a site plan approval, and a conditional use approval for the construction of a regulator station at 960 Holmdel Road (hereinafter “Project”). (Ra13; Ra17).⁴ The application was denied on October 25, 2018. (Aa39).

² “Ab” refers to Appellant’s Brief, and “Aa” refers to Appellant’s Appendix. “Ra” refers to BPU’s Appendix.

³ HZBA’s decision regarding the site at 970 Holmdel Road does not form the basis of the present appeal.

⁴ ALJ Pelios placed NJNG’s January 11, 2017 petition on inactive status for six

As a result, on November 29, 2018, NJNG filed a petition (Petition) with the BPU pursuant to N.J.S.A. 40:55D-19, seeking the same determination with respect to the Project as in the January 11, 2017 petition. (Ra1). NJNG proposed a natural gas regulator station that would include “a filter, heater, two regulator runs and associated piping.” (Ra5). It proposed an above-ground heating unit to be located adjacent to the proposed regulator station. (Aa823; Ra4; Ra6; 2T67:9-15). The filter for the regulator station is approximately four feet tall, and the tallest section of the Project, the vent stacks for the heating unit, is approximately fifteen feet tall. (Aa781; Aa859).

According to NJNG, the Project’s design is intended to “prevent the regulators and associated facilities . . . from freezing and becoming encased in thick ice,” which may lead to service interruptions and spread to underground piping. (Ra4-5; Ra7). It also explained that the purpose of the Project is to “maintain the integrity and reliability of NJNG’s local distribution system” by significantly reducing gas pressure between the transmission and distribution lines and thus facilitate the delivery of gas to customers in Holmdel and surrounding municipalities. (Ra4; Ra6; Ra8).

The Project would occupy six private easement areas on Block 13, Lot 13, which, pursuant to Holmdel’s zoning code, allows public utility infrastructure

months on October 12, 2017, and renewed the status on June 15, 2018. (Aa61).

as a conditional use. (Aa856-57; Ra5; Ra18); Holmdel, N.J., Mun. Code § 30-141.5(a) (2022).⁵ The lot is 16.51 acres and includes an 80,000 square-foot office complex, parking lot, and an over 100-foot-tall cellular communications tower. (Aa789; Aa796; Aa859). The regulator station would be situated on the southeastern side of the lot, which measures about 40 feet by 150 feet, and at the southern end of the Holmdel transmission line. (Ra12; Aa780; Aa789). The station would be located between the office complex and Holmdel Road. (Aa780). A solar farm is located south of the proposed site. (Aa789).

To “obscure visibility of the [Project] to the general public,” NJNG proposed covering the regulator station and associated equipment with fences and various landscaping, such as 12- to 14-foot-high trees and shrubs, and multiple evergreen trees planted about sixty feet from Holmdel Road’s right-of-way, which is “approximately midway between the [Project] and Holmdel Road.” (Aa781; Aa826). The Project’s fence enclosure would be located about 180 feet from Holmdel Road’s right-of-way and “260 feet from the nearest residential property line across Holmdel Road.” (Aa828). Furthermore, to

⁵ The Holmdel Municipal Code defines “conditional use” as permitted use in a zoning district where the applicant demonstrates that “such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in this chapter and upon the issuance of an authorization” by the HZBA. Holmdel, N.J., Mun. Code § 30-3(c) (2022).

reduce the Project’s potential noise impacts, the Project would be covered by an eight-foot-high sound wall. (Aa781; Aa826).

The BPU transmitted the Petition to the OAL as a contested case on December 3, 2018. (Aa39; Aa62). On December 18, 2019, ALJ Pelios issued an order consolidating the January 11, 2017 and November 29, 2018 petitions. (Aa39; Aa307). On February 13, 2020, ALJ Pelios presided over a hearing regarding the proposed Project. (Aa39). On March 2, 2020, Holmdel filed a motion to suspend the briefing schedule and direct NJNG to “undertake a formal review of the merits of this [P]roject measured against the new policies” of New Jersey’s 2019 Energy Master Plan (EMP). (Aa269). On June 11, 2020, ALJ Pelios denied the motion (hereinafter “June 11, 2020 Order”) (Aa247). On October 7, 2020, ALJ Pelios denied Holmdel’s motion to reconsider of that decision. (Aa166).

OAL Hearing and Initial Decision

The OAL hearing took place over the course of six days in October 2020. (Aa62). NJNG submitted testimony from Kraig Sanders, Marc Panaccione, John Wyckoff, Jeffrey Otteau, Edward Potenta, Robert Chilton, and Christine Nazzaro-Cofone. (Aa95).

Sanders, Panaccione, and Wyckoff, individually and collectively as a panel (hereinafter “panel”), testified as to the need for NJNG’s proposed

Project.⁶ The panel testimony established that, with BPU approval, NJNG constructed a 16-inch transmission line in 2012 to replace an existing 10-inch line due to its age and to comply with federal pipeline integrity regulations. (Aa810-11; 1T132:10-20; 1T133:25-134:22).⁷ Due to the transmission line replacement, the panel testified that installing the proposed regulator station was necessary to significantly reduce the pressure of transported natural gas between the transmission and distribution systems in a safe, adequate, and reliable manner and deliver natural gas to NJNG customers in Holmdel and nearby areas. (Aa772-73; 1T132:10-133:13).

According to the panel, NJNG installed a temporary regulator station at the time the transmission line was replaced. (1T135:18-25; Aa773). However, the panel noted that the temporary station could not be equipped with a heating unit, and consequently, the regulator and its related equipment faced icing

⁶ Kraig Sanders is NJNG's Director of Pressure Management and Transmission. (Aa807). Marc Panaccione is NJNG's Senior Engineer. (Aa779). Lastly, John Wyckoff is NJNG's Vice President, who is involved with, among other things, "the technical design and construction of [NJNG's] natural gas infrastructure." (Aa807).

⁷ According to Sanders, the federal rules on pipeline integrity, 49 C.F.R. Part 192, required all of NJNG's transmission lines "to be baseline by December 2012," which necessitated the replacement of the 10-inch line. (1T134:20-22; 1T135:2-9). Additionally, NJNG's panel testified that the construction project enabled NJNG to perform in-line inspections and assess the line's pipeline integrity in accordance with federal regulations. (Aa811).

issues, where a drop in pressure between the transmission and distribution lines would lead to the formation of ice on the regulator and its related equipment, thereby increasing the risk of service outages, especially in winter. (Ra6-8; Aa814). According to the panel, the station is “regularly encased in ice” throughout the year and “continuously encased in ice” during winter, thus requiring NJNG to thaw the regulator station, which is a “laborious and time consuming” process. (Ra8-9; Aa776; Aa818; 1T164:3-20).

While the panel testified that NJNG ran the temporary station at lower pressures “to mitigate the risks associated with an outage,” the panel indicated that icing issues persisted and that the pressure reduction method could “place additional burdens on surrounding regulators in the system, which can increase the potential for secondary or system wide failures.” (Aa819). Despite the pressure reduction method, the panel established that NJNG faced two significant icing incidents in 2014 and 2018, where the malfunctioning temporary station was out of service for a full day. (Aa819-20; 1T159:1-5; 1T163:20-164:20; 1T165:23-166:10; 1T171:15-172:9).

As a result, the panel testified that NJNG would install a Cold Weather Technologies (CWT) in-line heater with the new regulator station to address the icing concerns and enable the regulator to “adequately, safely, and reliably accomplish the reduction in gas pressure” between the transmission and

distribution systems and provide reliable service to customers in Holmdel and surrounding areas. (Aa71-72; Aa830-31; Aa836). According to the panel, NJNG operated CWT heaters reliably since 2011 with “minimal maintenance” and “no system outages.” (Aa831). Additionally, Sanders testified that the CWT heaters produce “less noise” and require “lowered fuel gas pressure to operate.” (2T92:6-25).

The panel added that catalytic heaters were considered as an alternative to the CWT heater; however, while NJNG viewed both CWT and catalytic heaters as low-emission technologies with comparable costs, the panel testified that NJNG faced reliability issues with catalytic heaters that were installed between 2008 and 2010, such as circuit board defects. (2T73:22-74:9; 2T82:1-9; 2T83:1-84:6; 2T113:20-114:11; 2T115:17-19). As such, Wyckoff noted that NJNG ceased the usage of catalytic heaters and opted to include CWT heaters in the NJNG’s system. (2T73:22-74:9).

Additionally, Panaccione testified regarding NJNG’s site selection process for the Project. (Aa782). In particular, he indicated that NJNG’s site analysis evaluated six potential properties located along the Holmdel transmission line corridor based on whether they were: (1) “as close as possible to the southern end of the Holmdel transmission line”⁸; (2) zoned for

⁸ Panaccione testified that a pump station for the Holmdel transmission line was

commercial, industrial, or utility uses; (3) not Preserved Farmland, properties acquired with Green Acres funding⁹, wetlands, contaminated property, or properties requiring significant tree clearing; and (4) “already developed land” for the purpose of mitigating environmental impacts. (Aa782-84; Aa790). Based on the criteria, Panaccione testified that 960 Holmdel Road was a suitable site for the Project. (Aa793).

Next, Otteau testified as to the Project’s impact on property values and concluded “to a reasonable degree of certainty” that the Project would not have any adverse impact on nearby real-estate values. (Aa1035; Aa1044).¹⁰ Otteau utilized the “paired sales technique” to analyze “sales or rental data on nearly identical properties . . . to isolate a single characteristic’s effect on value or rent,” such as the construction of a regulator station, and determine the impact of the Project on nearby property values. (Aa74; Aa1037).

situated “at the southern end of the line,” which would enable NJNG “to feed” the proposed regulator station and “provide natural gas to customers from that location northward” in Holmdel and nearby communities. (Aa783).

⁹ Pursuant to N.J.A.C. 7:36-26.1, the proposed use of properties funded by the Green Acres Program “for other than recreation and conservation purposes” requires State approval.

¹⁰ Otteau is NJNG’s expert in “real estate valuation and economic feasibility.” (Aa1035).

Third, Potenta testified as to the Project's environmental impacts. (Aa941).¹¹ He assessed the Project's impact on noise pollution and concluded that the Project complies with State and local noise regulations and that the resultant noise "will be lower than existing daytime or nighttime noise levels." (Aa942-43). Therefore, Potenta explained that the noise will not be "noticeable at the surrounding residences" and will have no adverse impact on the surrounding community. (Aa943). Additionally, Potenta analyzed the Project's air-quality impacts and testified that the proposed regulator station would not emit an odor or other air emissions. (5T34:3-12; 5T61:21-25; Aa946-47).

With regard to the resultant emissions from the CWT heater, Potenta testified that NJNG prepared an air-quality assessment using NJDEP's air-quality risk-screening method and the United States Environmental Protection Agency (EPA)'s regulatory air prediction model to evaluate the Project's air quality impact at surrounding areas. (5T20:6-21:2; 5T21:22-22:2; 5T45:3-9; Aa943; Aa946-48; Aa951-52). According to Potenta, the majority of the CWT heater's emissions would be carbon dioxide and water vapor, which are non-criteria emissions. (Aa947; Aa949). In situations where the CWT heater does not reach "proper combustion temperatures," he noted that the heater may emit

¹¹ Potenta is NJNG's expert in environmental engineering. (Aa941).

criteria pollutants in trace amounts. (Aa947; Aa952).¹² As such, Potenta testified that the concentrations of criteria and non-criteria air pollutants generated by the heater would be negligible¹³ compared to overall greenhouse-gas emissions and other sources of emissions in New Jersey and would not adversely impact public health or welfare. (5T20:6-21:2; 5T21:22-22:2; 5T45:3-9; Aa943; Aa946-48; Aa951-52).

Fourth, Chilton evaluated the EMP as a “policy” and “planning document” and testified that the Project is consistent with the EMP, including EMP Goal 5.4, which aims to “decarbonize and modernize New Jersey’s energy system” and “maintain existing gas pipeline system reliability and safety while planning for future reductions in natural gas consumption.” (Aa474; Aa490; Aa920; Aa923; Aa930-31).¹⁴ In addition, Chilton testified that the regulator station does not constitute an “expansion” of the gas system as described in EMP Goal

¹² The EPA is tasked with establishing primary and secondary National Ambient Air Quality Standards (NAAQS) for criteria emissions, which include carbon monoxide and nitrogen oxides. 40 C.F.R. §§ 50.8, 50.11; (Aa949). The primary NAAQS aim to “protect the public health,” and the secondary NAAQS serve to “protect the public welfare,” such as from “decreased visibility and damage to animals, crops, vegetation, and buildings.” 42 U.S.C. § 7409(b) (1977); (Aa948; 5T65:2-8).

¹³ Potenta defined “negligible” as “significantly below the criteria air pollutant standards set by” the EPA. (Aa943).

¹⁴ Chilton is NJNG’s expert in the development of the EMP. (Aa922).

5.4.1.¹⁵ (Aa491; Aa931). Rather, according to Chilton, the Project would satisfy EMP's goal to "maintain reliability for [NJNG's] existing distribution and transmission" systems. (Aa931). Chilton added that the Project would be "used and necessary" over the course of its "typical useful life," which is at least twenty years. (6T63:13-64:9).

Lastly, Nazzaro-Cofone testified that NJNG duly considered Holmdel's zoning ordinances and its community zone plan in proposing the Project. (Aa854).¹⁶ Namely, Nazzaro-Cofone established that the proposed Project is located in Holmdel's OL-2 zoning district, where public utilities are a conditionally permitted use. (Aa63; Aa86; Aa856-57). Additionally, she testified that the Project is consistent with the goals of Holmdel's Master Plan to maintain "the unique character of Holmdel," protect "the Township's open spaces from development," and provide "adequate infrastructure to serve Township residences and businesses" while "limit[ing] the development of growth-inducing infrastructure." (Aa857-59; Aa886-87).

¹⁵ EMP Goal 5.4.1 requires natural gas utilities to, where applicable, "[d]evelop a planning process to quantify and analytically assess the need for future expansion of the gas system and take appropriate action." (Aa443).

¹⁶ Nazzaro-Cofone is NJNG's expert in city planning and land use. (Aa854).

Prakash Santhana, Dr. Donald Moliver, and Berne Mosley testified on behalf of Holmdel. (Aa63-65). Santhana raised the Holmdel public's concerns about the Project's potential impact on the environment, gas rates, and "quality of life." (Aa405-406).¹⁷ Additionally, Santhana testified that "safe, efficient, and reliable service" had already been provided to Holmdel residents for the past twenty years, and thus, there was no need for the Project. (Aa406).

Next, Dr. Moliver testified as to the Project's impact on property values. (Aa343).¹⁸ In support of Holmdel's position that the Project would adversely impact the value of nearby properties, Dr. Moliver testified that the Project would create environmental and safety risks, such as the emission of noxious odors and the creation of noise pollution. (Aa347-48; Aa351). In addition, Dr. Moliver noted that the Project would create an "environmental stigma," which would cause "risk, uncertainty, market resistance and diminished value." (Aa348). Furthermore, Dr. Moliver testified that a "repeat-sales" methodology to compare the sales value of the same residence before and after the construction of a nearby regulator station would be a "better example" of whether the Project would adversely impact property values since "[a]ny

¹⁷ Santhana is an elected official of Holmdel Township. (Aa402).

¹⁸ Dr. Moliver is Holmdel's expert in real-estate valuation and economics. (Aa343).

differences in sales price . . . could be ascribed to the proximity” of the Project. (Aa351).

Lastly, Mosley testified as to the Project’s impact on EMP goals. (Aa314).¹⁹ According to Mosley, NJNG did not adequately consider EMP’s goals in designing and preparing the Project, assessing “the need for future expansion of the gas system” and proposing “non-pipeline solutions.” (Aa330).

On May 18, 2022, ALJ Pelios issued an Initial Decision recommending that BPU grant NJNG’s Petition to construct the proposed Project at 960 Holmdel Road. (Aa92-93).²⁰ ALJ Pelios considered the parties’ extensive submissions and testimonial evidence on the need for the proposed Project, the site selection process, the Project’s impact on property values, the Project’s impact on the environment, EMP’s applicability to the Project, and the Project’s effect on Holmdel’s community zone plan and zoning ordinance. (Aa68-69; Aa72; Aa77; Aa80; Aa85).

Based on the extensive record and credibility findings, ALJ Pelios found that: (1) the Project is “reasonably necessary to provide safe, adequate, and

¹⁹ Mosley is Holmdel’s expert in pipeline flow and hydraulic analysis. (Aa315).

²⁰ As NJNG opted to construct the Project at 960 Holmdel Road since the site incorporated “measures included specifically to address” Holmdel’s concerns, such as “the distance from Holmdel Road and the additional landscaping,” the Initial Decision focused on the proposed Project at 960 Holmdel Road. (Aa69).

reliable natural gas services” in the State; (2) the Project is “reasonably necessary for the service, convenience, and welfare of the public”; (3) NJNG considered “alternative sites and methods” for the Project; (4) the design for the Project is reasonable “considering the alternatives”; (5) the Project will “minimize adverse impacts on the environment”; (6) the Project is “not adverse to the public health and welfare”; and (7) the Project is “to address reliability concerns and not an expansion or improvement project” and is “consistent with the EMP” as it relates to “NJNG’s obligation to maintain a reliable and safe natural-gas system.” (Aa72; Aa76-77; Aa80; Aa84; Aa86-88; Aa92). Thus, the ALJ granted NJNG’s Petition and concluded that, pursuant to N.J.S.A. 40:55D-19, Holmdel’s zoning and land-use ordinances and any other ordinances, rules, or regulations promulgated under the auspices of MLUL are not applicable to the “construction, installation, and operation” of NJNG’s Project. (Aa92-93).

Holmdel submitted exceptions to the Initial Decision on July 5, 2022. (Aa46). NJNG and the New Jersey Division of Rate Counsel filed replies to Holmdel’s exceptions on July 29, 2022. (Aa50; Aa54).

BPU Decision

On December 21, 2022, BPU adopted ALJ Pelios’s Initial Decision in its entirety and granted NJNG’s Petition. (Aa56). Based on its review of the Petition, the record, the Initial Decision, and the parties’ exceptions, the BPU

agreed with ALJ Pelios's findings of fact and determinations regarding witness credibility, as well as the development and analysis of the record. (Aa54-55). In particular, the BPU found that: (1) NJNG's panel testimony was credible regarding the need for the Project; (2) a CWT heater is the most reasonable and practical method for heating the regulator; (3) the proposed site was the most reasonable location and there were "no reasonably available alternative sites for the Project that will achieve an equivalent public benefit"; (4) the Project will have "little to no material impact on the value of nearby properties"; (5) the Project will have "no adverse impact on the area's ambient noise levels or air quality" and will have a "negligible impact on the State's overall air quality and greenhouse-gas emissions"; (6) the Project is consistent with the goals of the EMP "when considering NJNG's obligation to maintain a reliable and safe natural-gas system" and is not an expansion or improvement project; and (7) NJNG "duly considered Holmdel's zoning ordinances and Holmdel's Master Plan when selecting the Project's site." (Aa54-56).

Consequently, the BPU determined that NJNG met its burden of proof under N.J.S.A. 40:55D-19 and held that the proposed Project is "reasonably necessary to provide safe, adequate, and reliable natural gas services in New Jersey, and is reasonably necessary for the service, convenience, and welfare of the public." (Aa55). As such, the BPU ordered that, in accordance with N.J.S.A.

40:55D-19, “Holmdel’s Land Use Law, and any other ordinances, rules or regulations promulgated pursuant to the auspices of the [MLUL] . . . do not apply to the construction, installation, and operation of the Project.” (Aa56). Thus, the BPU granted NJNG’s Petition and found that the proposed Project may be constructed. Ibid.

Holmdel appealed the BPU’s final administrative determination to this court on January 30, 2023. (Aa34).

ARGUMENTS

POINT I

THE COURT SHOULD AFFIRM THE BPU’S ORDER AS THE PROJECT IS REASONABLY NECESSARY FOR THE SERVICE, CONVENIENCE, AND WELFARE OF THE PUBLIC. (Addressing Appellant’s Arguments at Ab8-28; Ab53-61.)

There is substantial evidence in the record supporting the BPU’s finding that the proposed Project is reasonably necessary for the service, convenience, and welfare of the public. The BPU’s determination is entitled to deference and its Order should be affirmed.

The judicial capacity to review administrative agency decisions is limited. Pub. Serv. Elec. v. N.J. Dep’t of Env’tl. Prot., 101 N.J. 95, 103 (1985). BPU orders are presumptively valid and should “not be disturbed unless” the court finds “a lack of reasonable support in the evidence.” In re Pub. Serv. Elec. &

Gas Co.'s Rate Unbundling, 167 N.J. 377, 385 (2001) (internal citations omitted). “This presumption of reasonableness is even stronger here as the agency has been delegated discretion to determine the specialized and technical procedures for its tasks.” City of Newark v. Nat. Res. Council in Dep't of Env'tl. Prot., 82 N.J. 530, 540 (1980). The burden of overcoming the presumption of validity falls on “those who challenge the [BPU]’s rulings.” Sudler v. Env'tl. Disposal Corp., 219 N.J. Super. 52, 59 (App. Div. 1987). Holmdel cannot meet that burden.

N.J.S.A. 40:55D-19 sets forth the standard for considering NJNG’s petition. It provides, among other things, that if, after hearing on notice to interested parties, the BPU finds that “the present or proposed use by the public utility . . . is necessary for the service, convenience or welfare of the public,” the present or proposed use “is necessary to maintain reliable electric or natural gas supply service for the general public,” and “no alternative site or sites are reasonably available to achieve an equivalent public benefit, the public utility . . . may proceed in accordance with such decision of the [BPU], any ordinance or regulation made under the authority of this act notwithstanding.” N.J.S.A. 40:55D-19. In making its determination, the BPU must weigh all of the parties’ interests, and where the interests are equal, the utility is given preference because of clear legislative intent that the broad public interest to be served is

greater than local considerations. In re Monmouth Consol. Water Co., 47 N.J. 251, 260 (1966); In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 377 (1961); In re Hackensack Water Co., 41 N.J. Super. 408, 423 (App. Div. 1956).

The term “public” has been interpreted to refer to the public served by the utility and not the limited group benefited by a local zoning ordinance. See Hackensack, 41 N.J. Super. at 423. Furthermore, the utility need not show that the proposed project is absolutely or indispensably necessary for the public service, convenience and welfare, only that it is “reasonably necessary.” Pub. Serv., 35 N.J. at 377. In making its determination, the BPU must consider the site, the community zoning plan and zoning ordinances, the physical characteristics of the plot, the surrounding neighborhood, and the effect of the proposed use thereon. Ibid.; see also Monmouth Consol. Water, 47 N.J. at 259-60 (recommending that the Board consider whether the utility may mitigate “any resulting injury to abutting or neighboring owners” via “reasonable requirements relating to the physical appearance of the structure” and additional landscaping). Alternative sites and their advantages and disadvantages, including cost, must be considered in determining reasonable necessity. Pub. Serv., 35 N.J. at 377.

The BPU’s power to regulate utilities is broad. Its “authority over utilities, like that of regulatory agencies generally, extends beyond powers

expressly granted by statute to include incidental powers that the agency needs to fulfill its statutory mandate.” Pub. Serv., 167 N.J. at 384 (quoting In re Valley Rd. Sewerage Co., 154 N.J. 224, 235 (1998)); see In re Elizabethtown Water Co., 107 N.J. 440, 449-50 (1987) (“The Legislature has endowed the BPU with broad power to regulate public utilities [and] considerable discretion in exercising those powers.”).

The BPU thoroughly considered all these issues. (Aa55-56). After reviewing extensive submissions from the parties, the OAL evidentiary hearings, and the Initial Decision, the BPU concurred with the ALJ’s findings and determinations and found that, pursuant to N.J.S.A. 40:55D-19, the Project is “reasonably necessary to provide safe, adequate, and reliable natural gas services in New Jersey, and . . . reasonably necessary for the service, convenience, and welfare of the public.” (Aa55).

On appeal, Holmdel does little more than disagree with BPU’s assessment of the record before it. For instance, it argues that the current regulator experienced no reliability issues, as well as no “realistic risk of loss of service” arising from icing incidents in 2014 and 2018. (Ab18; Ab24-25). Additionally, Holmdel contends that NJNG did not provide “meaningful consideration” to catalytic heaters, which Holmdel characterized as a “superior heat source.” (Ab53-54).

However, it is well-settled that “[i]f there is any fair argument in support of the course taken or any reasonable ground for difference of opinion among intelligent and conscientious officials, the [agency’s] decision is conclusively legislative, and will not be disturbed unless patently corrupt, arbitrary or illegal.” Flanagan v. Dep’t of Civ. Serv., 29 N.J. 1, 12 (1959). Holmdel’s arguments fall short of meeting this high standard.

A. The Record Supports the BPU’s Determination that the Project is Reasonably Necessary to Provide Safe, Adequate, and Reliable Natural Gas Services.

Holmdel argues that the proposed Project is not reasonably necessary since “reliability and safety are not in any way compromised” under the temporary regulator station and that the two significant icing incidents experienced by that regulator in 2014 and 2018 “did not present any realistic risk of loss of service.” (Ab18; Ab24). Next, Holmdel claims that NJNG failed to give “meaningful consideration” to a catalytic heater as an alternative option. (Ab53-54). It also contends that the icing issues associated with the temporary regulator are a “non-existent” risk. (Ab25). Holmdel’s arguments are unsupported by the record.

First, the record supports the BPU’s finding that the proposed regulator for the Project is reasonably necessary to provide safe, adequate, and reliable natural gas services, and the CWT heater is the most reasonable and practical

method for heating the regulator. (Aa54-55). In support of an N.J.S.A. 40:55D-19 petition, the applicant has the burden of showing that “the means or method proposed to meet the public need is reasonable and desirable,” and alternative methods should be considered with respect to the applicant’s “customary practices and methods in the industry” and the applicant’s “existing methods.” Hackensack, 41 N.J. Super. at 426. Once the applicant demonstrates the alternative methods, “the burden of demonstrating a feasible alternative method ought to devolve on the objectors, as should a showing of alternate sites beyond those brought forward by the applicant.” Id. at 426-27; see also Pub. Serv., 35 N.J. at 375 (holding that the principles outlined in Hackensack apply to petitions filed pursuant to N.J.S.A. 40:55D-19).

Here, the BPU considered the testimony of NJNG’s panel of expert witnesses as to the need for the Project. (Aa69). Specifically, the BPU recognized that NJNG’s construction of a 16-inch transmission line required the installation of a regulator station that would reduce natural gas pressure between the transmission and distribution systems, thereby enabling the public utility to provide natural gas service to customers in Holmdel and surrounding areas in a safe, adequate, and reliable manner. (Aa69-70; Aa772-73; Aa810-11; 1T132:10-133:13; 1T133:25-134:22). However, the record reflects that the temporary regulator station could not be equipped with a heating unit; as a result,

the station and related equipment experienced “icing” issues, where a significant pressure drop between the transmission and distribution systems would cause ice to form on the equipment. (1T135:18-25; Aa773; Aa816-17; Ra6-8).

The panel’s testimony indicated that the icing issues increased the risk of service outages, including in winter, and the temporary station was “regularly encased in ice” throughout the year and “continuously encased in ice” during winter, despite NJNG’s mitigatory efforts to thaw the station and operate the equipment at lower pressures. (Ra8-9; Aa818; 1T164:3-20). The record reflects that, due to the icing issues, NJNG experienced two significant icing incidents in 2014 and 2018, which disrupted service for a full day. (Aa819-20; 1T159:1-5; 1T163:20-164:20; 1T165:23-166:10; 1T171:15-172:9). Therefore, Holmdel’s claims that the reliability of the temporary regulator station is “not in any way compromised” and that the two significant icing incidents “did not present any realistic risk of loss of service” are false. (Ab18; Ab24).

Consequently, the record reflects the benefits of installing a CWT heater along with the new regulator station. (Aa71-72; Aa830-31; Aa836). In particular, the CWT heaters, which NJNG utilized since 2011 with “no system outages,” would lessen the icing issues associated with significant drops in pressure and assist NJNG in providing safe, adequate, and reliable service to customers in Holmdel and surrounding municipalities. (Aa71-72; Aa830-31;

Aa836). As substantial evidence supports the BPU's finding that the proposed regulator station with the CWT heater is reasonably necessary to provide safe, adequate, and reliable natural gas services and reasonably necessary for the service, convenience, and welfare of the public, the BPU's Order should be affirmed. (Aa54-55).

Contrary to Holmdel's claim that NJNG failed to meaningfully consider a catalytic heater for its Project, the record indicates that NJNG evaluated the cost and emissions of the catalytic heaters and CWT heaters, which were approximately the same. (Ab53-54; Aa831-32; 2T82:1-9; 2T82:16-84:6; 2T113:20-114:11; 2T115:17-19). However, NJNG decided against the alternative because the utility experienced reliability issues with catalytic heaters that were installed between 2008 and 2010, such as circuit board and heater panel defects. (2T73:22-74:9; 2T83:1-84:6). While NJNG addressed its reliability concerns with the alternative catalytic heater, Holmdel failed to demonstrate why the catalytic heater was a feasible alternative to the CWT heater. Hackensack, 41 N.J. Super. at 426-27. Therefore, the BPU reasonably found that the CWT heater is the most reasonable and practical method for heating the proposed regulator. (Aa54-55).

Furthermore, Holmdel erroneously argues that the icing issues associated with the temporary regulator are a "non-existent" risk. (Ab25). As previously

noted in the record, NJNG’s temporary regulator regularly experiences icing issues throughout the year, especially in winter, which “increases the outage risk associated with equipment failure.” (Aa818). Additionally, in 2014 and 2018, the regulator malfunctioned as a result of two major icing incidents. (Aa819-20; 1T165:23-166:10; 1T172:2-9) (testifying that during the malfunction, the temporary station was out of service for a whole day). As the temporary regulator is located underground, the record reflects that during the two major icing incidents, NJNG was required to expend significant time and effort to access and repair the equipment. (1T165:14-166:10; 1T171:8-172:9; Aa818). Therefore, the record does not support Holmdel’s contention that icing issues associated with the temporary regulator are a “non-existent” risk, and as a result, NJNG’s Project is reasonably necessary to provide safe and reliable service to the public. (Ab25).

B. The Record Supports the BPU’s Finding that 960 Holmdel Road is the Most Reasonable Site for the Project, Considering the Alternatives.

Next, the evidence in the record supports the BPU’s finding that 960 Holmdel Road was the most reasonable site for the Project and there were no reasonably available alternative sites for the Project that will achieve an equivalent public benefit. (Aa56); N.J.S.A. 40:55D-19; Pub. Serv., 35 N.J. at 377. As the record indicates, NJNG considered six potential sites for the

proposed Project by analyzing four criteria, including whether the potential sites were “as close as possible to the southern end of the Holmdel transmission line” and whether they were zoned for commercial, industrial, or utility uses. (Aa782-84; Aa790). In addition, the record indicates that NJNG reviewed cost estimates, engineering plans, and residential concerns, such as the proximity of the proposed regulator station to “community-valued buildings” like schools, in evaluating the proposed sites. (Aa784-85; 2T50:18-51:22; 2T52:1-17).

Applying these criteria, NJNG ruled out four of the sites either due to their proximity to the northern section of the transmission line, the unwillingness of the current owner to sell, the sites’ residential zoning, and Green Acres funding restrictions. (Aa790-91). Although NJNG originally considered 970 Holmdel Road as a potential location, the utility ultimately preferred the proposed site at 960 Holmdel Road since it contained preexisting development, such as a cellular communications tower. (Aa790-91; Aa840). In addition, the preferred site at 960 Holmdel Road addressed residential concerns regarding the Project’s visibility, noise levels, and safety from vehicular traffic because the site would be located about 200 feet from Holmdel Road, approximately “four times farther back” than the originally planned site at 970 Holmdel Road, and the preferred site would also include additional landscaping, such as berms and foliage, to minimize the Project’s visual impacts. (Aa839-40; Aa825-26; Aa828; 2T23:25-

24:17; 2T28:2-29:15). Thus, the BPU’s determination that the proposed lot at 960 Holmdel Road was the most reasonable site for the Project and that no reasonably available alternatives for the Project would achieve an equivalent public benefit is supported by the record and should not be disturbed. (Aa56).

C. The Project Will Have Little to No Material Impact on Property Values in the Vicinity.

Third, substantial evidence in the record indicates that the proposed Project “will have little to no material impact on the value of nearby properties.” (Aa54). As required, the ALJ and BPU considered the Project’s impact on the site and “the surrounding neighborhood” and weighed the factor against the broader public interest. Pub. Serv., 35 N.J. at 377; Hackensack, 41 N.J. Super. at 427. To evaluate the Project’s impact on nearby property values, the ALJ and BPU reviewed Otteau’s testimony and reports, which utilized the “paired sales technique.” (Aa74-75; Aa386-87; Aa1037; Aa1049). In applying the paired sales technique, Otteau concluded that the sale or rental prices of residential and commercial properties near the proposed regulator station are “similar to comparable properties located further away.” (Aa1037; Aa1049-58).

In addition, Otteau denied Holmdel’s claims that the Project would create “an environmental stigma” and create market uncertainty and diminished property values in the neighborhood because, as noted in Otteau’s testimony, such a stigma would have created “quantifiable market evidence” or evidence

of “a dollar or percentage diminution in value” as a result of the properties’ proximity to the proposed regulator station. (Aa76; Aa1038-39). As such, Otteau concluded to a reasonable degree of certainty that the Project would not have an adverse impact on nearby real-estate values. (Aa74; Aa385-86; Aa1044).

Additionally, during the evidentiary hearings, the ALJ considered the testimony of Holmdel’s witness, Dr. Moliver, who instead recommended the use of a “repeat-sales” analysis. (Aa73; Aa347; Aa351). Dr. Moliver testified that the repeat-sales methodology would compare the sales value of a residence before and after the construction of a nearby regulator station to ascertain whether “[a]ny differences in sales price . . . could be ascribed to the proximity” of the proposed regulator station, which would “preclud[e] the need for” the adjustments utilized by NJNG’s paired sales technique. (Aa73-74; Aa351).²¹ Additionally, ALJ Pelios considered Dr. Moliver’s testimony that socioeconomic and environmental forces may influence the value of real property, as well as Dr. Moliver’s testimony that the regulator station would

²¹ In response to Dr. Moliver’s testimony that the repeat-sales methodology would not utilize the adjustments required by the paired sales technique, Otteau testified that the repeat-sales methodology would likewise require adjustments to take into account, among other factors, “physical changes” to nearby properties over specified periods of time, which may alter property values. (Aa1042-43).

create an “environmental stigma,” which may contribute to market resistance and diminished property values in the neighborhood. (Aa73; Aa347-48; Aa351).

While the ALJ found both Otteau’s and Dr. Moliver’s testimony to be credible, the record reflected that Dr. Moliver’s analysis was limited and that Otteau’s analysis regarding the paired sales analysis was well supported by quantitative data. (Aa76; Aa347; Aa1049-58). As such, the ALJ reasonably found that the paired sales analysis was “a reasonable and accurate method for calculating the impact of a regulator station on nearby property values.” (Aa76). Additionally, the ALJ recognized that both witnesses testified regarding the “subjective nature of real-estate valuation and appraisal” and the socioeconomic impact on the real estate market. (Aa76; Aa347-48; Aa1039). Based on the comprehensive data in Otteau’s testimony and research, ALJ Pelios and the BPU reasonably found Otteau’s testimony to be credible and concluded that the paired sales technique was a “reasonable and accurate method” for measuring the Project’s impact on nearby property values. (Aa76-77; Aa1049-58). Therefore, the OAL and BPU reasonably found that the Project would have “little to no material impact on the value of nearby properties.” (Aa54; Aa76-77).

D. The Record Supports the BPU's Determination that the Project Will Not Adversely Impact the Area's Ambient Noise Levels and Air Quality.

Fourth, substantial evidence in the record supports the BPU's reasonable finding that the Project will have "no adverse impact on the area's ambient noise levels or air quality" and will present "a negligible impact on the State's overall air quality and greenhouse-gas emissions." (Aa54). The OAL and the BPU reviewed the testimony of Edward Potenta, NJNG's air quality and noise expert witness. (Aa80). Based on his undisputed noise assessment of ambient noise levels at four sites near 960 Holmdel Road, the manufacturers' noise measurement data for the proposed regulator station and CWT heater, and the proposed installation of a sound wall to minimize noise from the regulator station, the resultant noise generated by the regulator station would be "lower than the measured existing noise levels at the near residences," and both the regulator station's and the CWT heater's noise levels would be lower than the daytime and nighttime sound level limits, in compliance with the State's noise regulations. N.J.A.C. 7:29-1.2; (Aa944-46; Aa966-67). As such, the generated noise would not adversely impact nearby residences. (Aa945-46).

Regarding the proposed regulator station's impact on air quality and greenhouse-gas emissions, the record indicates that the regulator would not emit any odors or air pollutants. (5T34:3-12; 5T61:21-25; Aa946-47). As such, the

BPU reasonably found that the proposed regulator station would not adversely affect air quality in the surrounding areas and the State. (Aa54).

With respect to the CWT heater's impact on air quality and greenhouse-gas emissions, the record reflects that NJNG prepared an air-quality assessment to determine the Project's air quality impact at surrounding areas. (5T20:6-21:2; 5T21:22-22:2; 5T45:3-9; Aa943; Aa946-48; Aa951-52). The record indicates that the majority of the CWT heater's emissions would be carbon dioxide and water vapor, which are non-criteria emissions. (Aa947; Aa949). While the heater may emit trace amounts of criteria pollutants where the CWT heater does not achieve "proper combustion temperatures," NJNG's undisputed assessment indicated that concentrations of criteria and non-criteria air pollutants generated by the heater would be negligible compared to overall greenhouse-gas emissions and other sources of emissions in the State and would not adversely impact public health or welfare. (5T20:6-21:2; 5T21:22-22:2; 5T45:3-9; Aa943; Aa946-48; Aa951-52). Therefore, the OAL and BPU reasonably found, based on substantial evidence in the record, that the proposed heater would only have a negligible impact on the State's overall air quality and greenhouse-gas emissions. (Aa56; Aa78; Aa80).

POINT II

THE PROJECT IS CONSISTENT WITH THE ENERGY MASTER PLAN'S GOALS TO MAINTAIN A RELIABLE AND SAFE NATURAL GAS SYSTEM. (Addressing Appellant's Arguments at Ab28-53.)

Holmdel challenges the admissibility of the testimony of NJNG's expert witness, Robert Chilton, on the EMP. (Ab38-39). It also contends that the proposed Project is inconsistent with "the State's climate laws and policies," including the EMP. (Ab33; Ab36-37; Ab42-43). Furthermore, Holmdel argues that the Project constitutes a "stranded asset." (Ab52-53). These arguments are erroneous and lack legal support.

The record supports the BPU's determination that the Project is reasonably necessary because it increases reliability, consistent with EMP's policy goals. (Aa55-56). Pursuant to N.J.S.A. 52:27F-14(b), the EMP outlines the State's long-term objectives and strategies on the "production, distribution, consumption and conservation of energy" and interim measures to fulfill these objectives. The "actions, decisions, determinations and rulings of the State Government" on energy-related matters must comply with the EMP "to the maximum extent practicable and feasible." N.J.S.A. 52:27F-15(b). According to Strategy 5 of the EMP, gas utilities must "continue to deliver, reliable, resilient, and affordable service" in a manner that "meets the immediate needs

of New Jersey’s gas consumers” and realize the State’s goals to achieve “100% clean energy and an 80% reduction in greenhouse gas emissions” from 2006 levels by 2050. (Aa474); see also N.J.S.A. 48:2-23 (requiring utilities to provide safe, adequate, and proper service to customers).

Here, the OAL and BPU reviewed the testimony of Robert Chilton, NJNG’s expert witness in the development and implementation of prior Energy Master Plans, and Berne Mosley, Holmdel’s expert witness in pipeline flow and hydraulic analysis, regarding the EMP’s long-term energy goals and the impact of the Project on the objectives outlined in the EMP. (Aa65-66; Aa82-83; Aa450; 6T48:20-49:4). Specifically, as the Project would increase reliability and promote the provision of safe, adequate, and reliable natural gas services to customers, as described in EMP Strategy 5, the Project is consistent with the EMP’s goals relating to the maintenance of a reliable gas distribution system. (Aa84); N.J.S.A. 48:2-23. While the OAL and BPU recognized that the reduction of greenhouse gas emissions and other air pollutants, such as carbon dioxide, is one of the described goals in the EMP and the station’s heater may emit greenhouse gases, the record notes that the proposed heater’s generation of criteria and non-criteria emissions would be negligible compared to the State’s overall emissions, as previously stated. (Aa56; Aa79-80; Aa90; Aa474). As such, the BPU reasonably found that the proposed Project is consistent with the

EMP's goals to maintain the reliability of NJNG's natural-gas system. (Aa54-55).

Holmdel challenges the admissibility of Chilton's expert testimony. (Ab38). First, Holmdel calls into question Chilton's testimony regarding the nature of the EMP since "he had no role of any kind [i]n the development of this EMP." Ibid. Second, Holmdel contends that Chilton's testimony on the EMP constituted an opinion on an "ultimate legal issue." (Ab38-39).

The BPU may not "reject or modify any findings of fact as to issues of credibility" unless the ALJ's findings are "arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). Courts should provide "due regard to the opportunity" of the ALJ "who heard the witnesses to judge of their credibility" and also "to the agency's expertise where such expertise is a pertinent factor." Clowes v. Terminix Int'l, 109 N.J. 575, 587 (1988). Pursuant to N.J.A.C. 1:1-15.9(b), expert testimony is admissible if the opinions and inferences are "[b]ased on facts and data perceived by or made known to the witness at or before the hearing." N.J.A.C. 1:1-15.9(b)(1). In addition, the expert witness's testimony must be "[w]ithin the scope of special knowledge, skill, experience or training possessed by the witness." N.J.A.C. 1:1-15.9(b)(2). An expert witness's testimony "is not objectionable because it embraces the ultimate issue

or issues to be decided by the judge.” N.J.A.C. 1:1-15.9(c) (emphasis added). Finally, expert witnesses may form opinions or inferences based upon “facts and data . . . reasonably relied upon by experts in the particular field.” N.J.A.C. 1:1-15.9(f).

Here, ALJ Pelios correctly treated Chilton as a credible expert witness in interpreting the EMP. (Aa84). In the Initial Decision, the ALJ highlighted that the witness had “prior experience in the development and implementation of EMPs” and their updates. (Aa82; Aa922; 6T28:24-29:3). Additionally, ALJ Pelios noted that Chilton had “over thirty-five years’ experience in the energy industry, including working at the BPU and the New Jersey Department of the Public Advocate.” (Aa65; Aa920). While the expert witness was not involved with the development of the current EMP, ALJ Pelios recognized that Chilton “remained abreast of New Jersey’s recent EMPs,” including the current version. (Aa65; 6T29:9-16). Furthermore, Holmdel accepted Chilton as an expert witness during the evidentiary hearings. (6T34:24-35:1). Therefore, ALJ Pelios reasonably treated Chilton as a credible expert witness, and the admissibility of his testimony regarding the EMP should not be disturbed. (Aa65; Aa84).

Next, Holmdel incorrectly argues that Chilton’s testimony on the nature and application of the EMP improperly constituted “an ultimate legal issue.” (Ab38-39) (citing to Estate of Campagna v. Point LLC, 464 N.J. Super. 153,

171-73 (App. Div. 2020)). While N.J.S.A. 52:27F-15(b) requires the decisions and rulings of the State government to comply with the EMP “to the maximum extent practicable and feasible,” the EMP itself is a policy document, not a law or regulation. (Aa923). As such, Holmdel’s challenge towards Chilton’s qualifications and testimony must be rejected, and Holmdel presents no reason to disturb ALJ Pelios’s credibility findings. (Aa84).

Holmdel contends that the Project is inconsistent with the goals outlined in EMP Strategies 4 and 5, including EMP Goal 5.4, which seek to “reduce energy consumption and emissions from the Building Sector,” “decarbonize and modernize New Jersey’s energy system,” and “maintain existing gas pipeline system reliability and safety while planning for future reductions in natural gas consumption.” (Ab33; Ab36-37; Aa458; Aa474); see (Aa453) (outlining EMP Strategy 5 and describing the State’s goal to “reduc[e] the need for gas distribution system expansion”); (Aa490) (describing EMP sub-goals 5.4.1 and 5.4.2, which aim to formulate a process for future expansions of the distribution system). In particular, Holmdel argues that NJNG improperly seeks to “lock in decades of continued emissions” arising from the utility’s proposed “expansion” of the gas distribution system, which is inconsistent with the EMP. (Ab37; Aa458; Aa474). However, as already addressed in BPU’s Order, the record indicates that the NJNG’s proposed regulator station, a reliability project that

reduces gas pressure on a transmission line, does not increase system capacity. (Aa55; Aa838-39; Aa931; 6T62:17-63:4). As such, the Project is not an expansion or upgrade of the utility's gas distribution system as described in the EMP. Ibid. Therefore, the Project does not conflict with EMP Strategies 4 and 5, including the sub-goals of EMP Goal 5.4, pertaining to expansions or upgrades of the gas distribution system. (Aa56).

The proposed Project is also not a “stranded asset.”²² (Ab53). Even as the State pursues EMP's goals of reduced emissions and the electrification of buildings, the Project remains necessary as it reduces pressure between the transmission and distribution lines and increases the reliability of the existing natural gas distribution system, consistent with EMP's goals. (Ra4; Aa71; Aa837); see also (Aa490) (describing EMP Goal 5.4, which aims to “[m]aintain existing gas pipeline system reliability and safety”). Additionally, ALJ Pelios and the BPU recognized that the Project will have a useful life of at least twenty years and will operate into the foreseeable future. (Aa55; Aa71; Aa837; 6T64:2-

²² Chilton testified as to the general meaning of stranded utility costs. (6T56:7-20). Namely, “piece[s] of equipment that [are] no longer needed” constitute stranded costs, in which there are “unamortized costs on the books of the utility.” Ibid.

9).²³ Therefore, Holmdel’s argument that the Project is a “stranded asset” is unsupported by the record. (Ab53).

Furthermore, in relying on the State’s clean energy and climate policies outlined in the EMP, the Clean Energy Act, the Global Warming Response Act, and the NJDEP-issued “New Jersey’s Global Warming Response Act: 80x50 Report: Evaluating Our Progress and Identifying Pathways to Reduce Emissions 80% by 2050” (80x50 Report)²⁴, which address the State’s goals to reduce greenhouse gas emissions and natural gas consumption, Holmdel argues that NJNG must reduce its natural gas usage by immediately “halting installations in new construction,” including the Project. N.J.S.A. 26:2C-38; N.J.S.A. 48:3-87.9; (Ab42-43). However, Holmdel provides no support for its contention that the above-referenced statutes and policy documents would impact the construction of reliability projects pursuant to N.J.S.A. 40:55D-19.

²³ Holmdel’s witness, Prakash Santhana, testified that many “residents, business[es] and public facilities” in Holmdel rely and will continue to rely on “natural gas for all or a portion of their energy needs . . . for some time.” (Aa407).

²⁴ In incorporating the EMP goals and strategies, NJDEP’s 80x50 Report calls for, among other objectives, “substantial reductions” in greenhouse gas emissions and describes policy-based strategies to achieve the EMP goals, such as by transitioning residential and commercial buildings to electric heat. (Aa47; Aa115).

As ALJ Pelios correctly stated in OAL’s June 11, 2020 Order and affirmed in OAL’s October 7, 2020 Order denying Holmdel’s motion to reconsider, the EMP did not impose a moratorium on new or ongoing utility projects. (Aa164-65; Aa251). Additionally, no administrative regulations or standards relating to the EMP’s goals and strategies are in effect that would impact the N.J.S.A. 40:55D-19 proceeding or bar the implementation of NJNG’s Project. (Aa81); see Metromedia v. Div. of Tax’n, 97 N.J. 313, 330 (1984) (holding that rulemaking should be exercised where “agency action is concerned with ‘broad policy issues’ that affect a large segment of the regulated or general public”). Furthermore, as previously noted, while the EMP aims for a gradual reduction of natural gas consumption and air pollutant emissions, any emissions originating from the Project would be negligible based on NJNG’s environmental impact analysis. (Aa54; Aa475; Aa951-53). Therefore, the BPU reasonably held that the Project is consistent with the EMP’s goals to maintain a reliable and safe natural gas system. (Aa56).

POINT III

**THE RECORD REFLECTS THAT NJNG DULY
CONSIDERED HOLMDEL’S COMMUNITY
ZONE PLAN AND ZONING ORDINANCE.
(Addressing Appellant’s Arguments at Ab61-65.)**

Holmdel claims that the BPU is “ill-equipped” to handle zoning or land use matters and that the BPU arbitrarily failed to consider the findings and

conclusions of the HZBA. (Ab61). It also claims that BPU was obligated to defer to HZBA's findings. (Ab63). These assertions lack legal and factual support.

BPU has broad authority in the general supervision, regulation of and jurisdiction and control over public utilities. N.J.S.A. 48:2-13. The Legislature recognized that "the public interest in proper regulation of public utilities transcends municipal or county lines" and that such centralized regulation "must be entrusted to an agency whose continually developing expertise will assure uniformly safe, proper and adequate service by utilities throughout the State." Pub. Serv., 35 N.J. at 371.

If a public utility satisfies the "reasonably necessary" standard, the BPU has the statutory authority to preempt "any ordinance or regulation made" under the MLUL. N.J.S.A. 40:55D-19. N.J.S.A. 40:55D-19 proceedings provide public utilities with "a complete, original and independent avenue of remedy"; thus, these proceedings do not concern the appropriateness or reasonableness of a zoning board's determinations and as such are not direct appeals of municipal agency decisions. Monmouth Consol. Water, 47 N.J. at 257. Rather, these proceedings are de novo, based on a new record that the BPU will consider in determining whether a utility project is reasonably necessary. Monmouth Consol. Water, 47 N.J. at 257; see Hackensack, 41 N.J. Super. at 424-25 ("We

do not mean to suggest . . . that the board cannot grant the petition unless the proofs would sustain a recommendation of variance by the local board of adjustment.”).

It is the BPU, not the HZBA, that is statutorily tasked with determining whether a utility project is reasonably necessary based on, among other factors, “the community zone plan and zoning ordinance.” Thus, Holmdel’s claims that the OAL and BPU lack the expertise to evaluate such zoning criteria and that BPU was required to defer to HZBA’s findings and conclusions regarding the proposed Project are incorrect. Pub. Serv., 35 N.J. at 377.

As a practical matter, Holmdel’s suggestion that BPU’s decision somehow undermines its zoning authority has no basis in the record. NJNG’s expert witness Nazzaro-Cofone testified without dispute that in Holmdel’s OL-2 zoning district, public utilities are a conditionally permitted use provided that the applicable requirements in Holmdel Code § 30-155.2(a) are met. (Aa856-57); Holmdel, N.J., Mun. Code § 30-155.2(a) (2022). Namely, the municipal code requires that: (1) the public utility project provide “direct utility services”; (2) the public utility submit “[s]ite plans, specifications and a statement” regarding “the need and purpose” of the project; and (3) the public utility submit proof that “the proposed installation in a specific location is necessary and convenient for the efficiency” of the public utility system or “the satisfactory

and convenient provision” of utility service to the relevant area. Holmdel, N.J., Mun. Code § 30-155.2(a) (2022); (Aa877). That testimony establishes that the Project satisfied these zoning requirements. (Aa63; Aa86; Aa856-57).

Additionally, the Project is consistent with the goals of Holmdel’s Master Plan to maintain “the unique character of Holmdel,” protect “the Township’s open spaces from development,” and provide “adequate infrastructure to serve Township residences and businesses” while “limit[ing] the development of growth-inducing infrastructure.” (Aa857-59; Aa886-87). In particular, the record indicates that NJNG would implement the Project in a commercially developed site that has existing uses, such as the cellular communications tower and office building. (Aa859). As such, the record reflects that the Project would preserve open space. Ibid. In addition, consistent with Holmdel’s Master Plan, the Project would also provide reliable natural gas infrastructure to serve Holmdel ratepayers. (Aa858). Finally, as already described in NJNG’s noise and air quality assessments, the Project would have no adverse impact on ambient noise levels and air quality in Holmdel. (Aa945-46; Aa948-49). Therefore, the BPU reasonably found that NJNG duly considered Holmdel’s zoning ordinances and Holmdel’s Master Plan when selecting the Project’s site. (Aa55).

Based on substantial evidence, the BPU reasonably concluded that the proposed Project is reasonably necessary for the service, convenience, and welfare of the public by evaluating the reasonable need for the proposed regulator and CWT heater, the reasonableness of the proposed site at 960 Holmdel Road, and the alternatives for the proposed Project and site. Additionally, the BPU reasonably considered the Project's impact on property values, the Project's environmental impacts, the Project's consistency with EMP goals, and the Project's impact on Holmdel's Master Plan and zoning ordinance in reviewing NJNG's Petition. Because substantial evidence in the record supports these conclusions, the BPU's Order should be affirmed.

CONCLUSION

For the reasons set forth above, the court should affirm the BPU's Order dated December 21, 2022.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW
JERSEY
Attorney for Respondent

By: /s/ Matko Ilic
Matko Ilic
Deputy Attorney General
Attorney ID No. 274332018
Matko.Ilic@law.njoag.gov

Dated: August 28, 2023



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL.
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

August 28, 2023

Via e-Courts Appellate Division

Joseph H. Orlando
Clerk of the Appellate Division
Hughes Justice Complex
25 W. Market Street
P.O. Box 006
Trenton, NJ 08625-0006

Re: In the Matter of the Petition of New Jersey Natural Gas Company for a Determination Concerning the Holmdel Regulator Station Pursuant to N.J.S.A. 40:55D-19 – 2017 Petition and In the Matter of the Petition of New Jersey Natural Gas Company for a Determination Concerning the Regulator Station Pursuant to N.J.S.A. 40:55D-19 – 2018 Petition

**BPU Docket Nos. GO17010023 and GO18111257
Appellate Division Docket No. A-001229-22T2**

Respondent Rate Counsel's Letter Brief

Dear Mr. Orlando:

Please accept this letter brief in lieu of a more formal submission pursuant to R. 2:6-2(b), by the New Jersey Division of Rate Counsel ("Rate Counsel") in above-referenced matter.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Parties

New Jersey Natural Gas Company (“NJNG” or “Company”) is a public utility providing natural gas distribution service to customers within its service territory. N.J.S.A. 48:2-13. NJNG is required to provide its customers with safe and adequate service. N.J.S.A. 48:2-23.

Holmdel is a municipality in NJNG’s service territory. While NJNG is required to provide service to residents of Holmdel, the cost of that service is spread across NJNG’s entire service territory.

The Division of Rate Counsel (“Rate Counsel”) is charged under New Jersey Law with protecting the interest of utility ratepayers. N.J.S.A. 52:27EE-46 et seq. Specifically, Rate Counsel “may represent and protect the public interest...in proceedings before and appeals from any State...board charged with the regulation of or control of any business, industry or utility regarding a requirement the utility provides a service or regarding the fixing of a rate...or charge for a product or service...” *Id.* Consequently, Rate Counsel has an interest in all proceedings before the Board of Public Utilities (“Board” or “BPU”) that concern utility rates. Rate Counsel is concerned about the

¹ Because the procedural history and facts of this matter are inextricably related, they are being combined.

impact on the Company's ratepayers if costs are increased as a result of this case, as it will impact all ratepayers, not just those residing in Holmdel.

The Board is an adjudicatory body that, after a proceeding before the Office of Administrative Law, determined that a proposed regulator was necessary for the service, convenience or welfare of the public pursuant to N.J.S.A. 40:55D-19. It is that order that is the subject of this appeal.

The Present Matter

On December 7, 2016, the Holmdel Zoning Board of Adjustments ("Zoning Board") rejected NJNG's application to construct the proposed Regulator Station ("Regulator") at 970 Holmdel Road. On January 11, 2017, NJNG filed a petition with the BPU seeking a determination pursuant to N.J.S.A. 40:55D-19 that a natural gas Regulator at 970 Holmdel Road is reasonably necessary for the service, convenience or welfare of the public, and that any municipal land use rules be waived for the construction of the Regulator. RCa1. As stated in its petition, on August 17, 2016 at a hearing on the Company's application for the 970 Holmdel Road location, a member of the Zoning Board asked the Company whether it considered the site at 960 Holmdel Road. RCa55 at para 25. As a result of the Zoning Board's 2016 denial of the proposed location at 970 Holmdel Road and the August 16, 2016 suggestion to locate the Regulator at 960 Holmdel Road, NJNG then formally

proposed the 960 location to the Holmdel Zoning Board on January 2, 2018. RCa60. This proposal at the second and different location was also rejected by the Zoning Board on or about October 25, 2018. H280a. Therefore NJNG filed a second petition before the Board on or about November 28, 2018 for permission to construct the Regulator at the second proposed location at 960 Holmdel Road pursuant to N.J.S.A. 40:55D-19. RCa44. These two petitions were transmitted to the Office of Administrative Law (“OAL”) and then ultimately consolidated. H307a. The Township of Holmdel (“Holmdel” or “the Township”) intervened in the consolidated matters and three residents of the Township were granted participation status. H307a. On or about March 2, 2020, Holmdel filed initial testimony. Rate Counsel did not file testimony. RCa61. Holmdel and the Company each filed rebuttal testimony. H60a at p. 3. Holmdel filed various motions in this matter, including motions to strike aspects of the Company’s testimony for lack of response to discovery and motions to dismiss based on the Company’s lack of consideration of the New Jersey Energy Master Plan, all of which the ALJ denied. H162a; H166a; H171a; and H247a. A public hearing for these matters was conducted on February 13, 2020. H800a.

Administrative Law Judge Elias Pelios presided over virtual evidentiary hearings on October 14, 16, 20, 21, 22, and 23, 2020. RCa80. The OAL

issued its initial decision May 18, 2022 where it determined that pursuant to N.J.S.A. 40:55D-19, the construction of the Regulator at 960 Holmdel Road is reasonably necessary for the service, convenience, or welfare of the public and that the zoning and land-use ordinance of the municipality and its county shall have no application thereto. H60a. On December 21, 2022, the Board adopted the Initial Decision in its entirety without modification. H38a.

Holmdel filed this appeal on January 30, 2023 to challenge the Board's adoption of the Initial Decision which approved New Jersey Natural Gas's petition to construct the Regulator at 960 Holmdel Road, Holmdel New Jersey. H34a.

ARGUMENT

POINT I

THE BOARD MUST CONSIDER COST IN REVIEWING APPLICATIONS FOR A WAIVER UNDER N.J.S.A. 40:55D-19

N.J.S.A. 40:55D-19 provides that:

If a public utility...is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility...has an interest, and appeal to the Board of Public Utilities of the State of New Jersey may be taken...If, after such hearing, the Board of Public Utilities shall find that the present or proposed use by the public utility...is necessary for the service, convenience or welfare of the public, including,...a finding by the board that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and

that no alternative site or sites are reasonably available to achieve an equivalent public benefit, the public utility...may proceed... [Therefore any] act or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation ... if upon a petition of the public utility, the Board of Public Utilities ... decide[s] the proposed installation of the development in question is **reasonably necessary** for the service, convenience or welfare of the public.

(Emphasis added).

Additionally, the New Jersey Supreme Court interpreted N.J.S.A. 40:55-50, the statutory predecessor to N.J.S.A. 40:55D-19,² finding:

The particular site or location must be found to be ‘reasonably necessary’ ... [and a]lternative sites and their comparative advantages and disadvantages, **including cost**, must be considered in determining reasonable necessity.”

In re Public Service Electric & Gas Co., 35 N.J. 358, 377 (1961) (emphasis added).

The Board continues to apply the Court’s interpretation of the preceding statute to the current N.J.S.A. 40:55D-19 to emphasize that cost is a factor when determining whether a utility project is “reasonably necessary” under the statute. In 2010, the Board found that absolute certainty with regard to cost

² The pertinent language of the superseded N.J.S.A. 40:44-50 is substantially similar to the current N.J.S.A. 40:55D-19. N.J. Natural Gas Co. v. Borough of Red Bank, 438 N.J. Super. 164, 180 (App. Div. 2014).

was not required for a reasonable necessity determination.³ In that matter, the Board determined that the increased costs to PSE&G's ratepayers would likely be offset by a decrease in energy and capacity costs due to the increased competitive supply that would result from the project. *Id.* at p. 75. In 2015, the Board considered avoided costs of a service interruption to approximately 142,000 SJG customers as an added benefit to its reasonable necessity determination.⁴ In 2016, the Board considered the costs of a potential service interruption and restoration to approximately 400,000 NJNG customers in its determination that the building and operating an intrastate pipeline pursuant to N.J.S.A. 40:55D-19 to be reasonable, instead of the more costly alternative of restoring gas service to those customers.⁵

Moreover, the cost is of importance to the utility. Utilities cannot simply spend as much as they like and hope for recovery of the expenditure in rates. Rather, in order for a utility's costs to be eligible for rate recovery, such

³ I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 (Susquehanna – Roseland Transmission Line, BPU Docket No. EM09010035 (April 21, 2010).

⁴ I/M/O the Petition of South Jersey Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19, BPU Docket No. GO13111049 (December 16, 2015)

⁵ I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning The Southern Reliability Link Pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:9-25.4. BPU Docket No. GO15040403 (March 18, 2016)

costs must be reasonably and prudently incurred. See, Public Service Coordinated Trans. V. State, 5 N.J. 196, 222 (1950). In 2012, the Board analyzed the reasonableness of the cost where an upgraded transmission line was proposed to traverse multiple municipalities within New Jersey.⁶ The Board stated that it “must consider the cost that New Jersey electricity customers will bear in connection with the Project.” Id. at p. 28.

Project costs, regardless of the nature of the project, are crucial to any evaluation of reasonable necessity because the cost will ultimately be borne by the Company’s ratepayers if the project is later deemed prudent by the Board. While the Township of Holmdel’s Brief (“Hb”) mentions cost 34 times, it only mentions ratepayers once and seems to indicate that the Company has an unlimited supply of ratepayer funds at its disposal when it states: “[t]he utility can spend substantially more money than any other party because it has access to ratepayer funds.” Hb at p.10.⁷ However, the Company’s “access” to ratepayer funds is not without limits and is subject to Board approval. Indeed, the utility’s funds are far from unlimited as every dollar spent by a utility is

⁶ I/M/O the Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 Re: North Central Reliability Project, BPU Docket No. EO11050323 (June 18, 2012).

⁷ This statement is made in an attempt to shift the burden of proof. While Rate Counsel does not address the burden of proof issue, Rate Counsel notes first that financial status does not impact burden of proof and second, as explained below, ratepayers are not a source of unlimited funds.

recovered from ratepayers with the addition of a return on investment.

Ratepayers are not an endless source of funding and the Board's review will at some point limit the utility's access to funds.

Below the Board properly considered the cost of the combustion heater purchased by the Company, in comparison to the more expensive catalytic heater, when it determined that the Regulator was reasonably necessary. H38a at p. 18. The Board was well aware that those additional costs would be borne by ratepayers and that the additional cost was not required for safe and adequate service to NJNG's customers. Therefore, the Board properly considered the cost of the project and the Court should affirm the Board's decision.

POINT II

RATEPAYERS SHOULD NOT BEAR UNREASONABLE COST INCREASES FOR THE REGULATOR ASSOCIATED WITH HOLMDEL'S REQUESTS AND THE RESULTING PASSAGE OF TIME.

When a utility requests recovery on a capital project such as the Regulator, Rate Counsel will weigh in on the prudence of the project and the Board will ultimately make a decision regarding the prudence of the cost to determine if it is reasonable for the utility to recover a portion or all of the cost of the project through customer utility rates. See, Public Service Coordinated

Trans. v. State, 5 N.J. at 222. If the Holmdel Regulator is ultimately placed into service, a BPU decision on the prudence of the project will be made at a later date during a NJNG base rate case. As a result, the legal rulings and the information in the record of the instant matter may impact a future determination of whether costs associated with the Regulator are prudent. Although Rate Counsel recognizes that this Court will not specifically determine which costs will be passed onto ratepayers, Rate Counsel seeks to highlight that any decision made by this Court will ultimately impact NJNG customer rates if and when the finished Regulator is placed in-service.

The Township provides an accurate snapshot of the mounting costs resulting from the numerous requests and challenges to the Regulator when it states: “[NJNG] has now spent more than \$1.8 million and counting in legal and expert fees, retaining at least three law firms and five experts, pursued two applications at the Holmdel zoning board and the two petitions under challenge.” Hb at p. 7. In fact, Marc Panaccione, a Senior Engineer for NJNG, testified that the level of spending required to overcome the zoning process alone was unprecedented. 1T100:L17-21. The unprecedented costs included addressing the Township’s concerns regarding air and noise emissions, declining real estate values, and landscaping and planning issues to

hide the Regulator from view for the two different proposed locations.

1T101:L11-6.

As discussed above, the first location proposed by NJNG for the Regulator was at 970 Holmdel Road and NJNG filed its first petition with the Board planning for the Regulator at that location. RCa1. Then, at the suggestion of the Township, NJNG then filed a second petition proposing the Regulator at a different location at 960 Holmdel Road. RCa55. The fact that NJNG had to plan for the Regulator in two different locations and respond to the Township's various concerns and ongoing litigation has certainly increased the costs associated with the Regulator.

Additionally, in proceedings below the Township made multiple requests for modifications to the Regulator site. The Township does not appear to appreciate the potential increase in NJNG's rates despite that the Township residents are included within NJNG's territory. Many of these previous requests for modifications, if adopted by NJNG, would have added costs to the project. For example, the Township argued that the Company did not adequately consider use of the catalytic heater as an alternative to the combustion heater that the Company already purchased back in 2013 despite testimony that the catalytic heater was more expensive. 1T82:L5-9. The Township also argued that the Company should have pursued condemnation

proceedings to potentially place the Regulator further back from Holmdel Road. RCa74. Condemnation proceedings would have added significant time and legal expenses to the cost of the Regulator as they are inherently adversarial and generally reserved as a last resort. Also, moving the Regulator further back from Holmdel Road would have increased the cost of the project due to the associated increase in cost per foot for the inlet pipe. In the present matter, the Township revives its initial argument that the Company “do nothing” i.e., continue using only the temporary regulator. Hb at p. 49. Yet, the Board has affirmed the OAL’s decision which found that the Regulator is in fact necessary because “without a heater, ice encasement could cause station failure, resulting in gas service outages to customers, and devastating consequences to scores of affected customers, especially in the winter.” H38a at p. 18.

According to information provided by the Company, if the Regulator were constructed at the first location in 2017 the costs would have been approximately \$3,020,000. H1292a. However, the costs associated with the second location in 2018 were almost \$1 million more at \$3.9 million, which included the permitting and planning costs associated with the first location. H1308a. At Rate Counsel’s request the Company estimated the cost of the second location in February 2020 to be approximately \$4,581,000. H1626a.

Mr. Panaccione attributed approximately \$1.75 million has been spent by the Company to address the legal protests of the Township. 1T105:L19 to 1T106:L9. These two increases plus any additional increases above and beyond the \$3 million resulting from this appeal and the passage of time are not “reasonably necessary” to provide safe and reliable gas service pursuant to 40:55D-19. Regardless of which party is responsible for ballooning costs of the Regulator, the fact remains that the costs increased nearly 49% from the original cost estimate proposed in the Company’s 2017 petition. These costs, assuming they are found to be prudent, will be borne by NJNG’s ratepayers. Significantly, all of the NJNG ratepayers, whether they live in Holmdel or not, will pay the costs associated with the Regulator in their rates since rates are set on a service territory basis, not a township basis. Although Rate Counsel is aware that the issue of prudence is not before this Court, it is important to note that the Township’s continual protests and suggestions for modifications to the project only serve to drive up the cost to all NJNG ratepayers on a project that the Board has found to be necessary. In order to alleviate further potential costs to ratepayers, the Court should affirm the Board’s decision below.

POINT III

THE FUTURE OF NATURAL GAS IN THE STATE HAS YET TO BE DECIDED THEREFORE THE TOWNSHIP'S STRANDED ASSET ARGUMENT MUST FAIL

The Township argues that the proposed Regulator would immediately become a stranded asset as soon as it is placed in-service, because the state's energy and climate policies mandate immediate and continuing decreases in natural gas consumption until 100% of the energy sector is decarbonized by 2050. Hb pp. 52-53. This is an oversimplification of the State's policy, as the state has yet to issue definitive guidance in this area. While the Township may be correct that the Regulator could become a stranded asset at some point in the future, natural gas is currently being utilized and the gas utilities have the responsibility to maintain the system for safe and reliable service. N.J.S.A. 48:2-23. The Initial Decision adopted by the Board found under these specific set facts that the Regulator was needed for reliability. H60a at p. 33; H38a at p. 18. Specifically the ALJ stated "the proposed station is not an expansion or upgrade of NJNG's system and is necessary for NJNG to continue providing reliable service to its customers." H60a at p. 31. The Court must evaluate this matter within these specific set of circumstances. While the Regulator could

become a stranded asset⁸ at some future point in time, the Township has not (and cannot) provided any specific date for that occurrence. Hb pp. 5-53. Additionally, because there is no actual state policy at the present time, the Township is not able to identify any guidance that specifically limits the implementation of gas infrastructure. Id.

While the State has very ambitious climate policies for the reduction of greenhouse gas emissions and the Clean Energy Act of 2018 mandates energy use reduction by utilities' customers,⁹ the exact timeline of when the State will transition away from natural gas is unknown, but it will certainly not happen overnight. In fact, the BPU recently held a two-day technical conference concerning the implementation of Executive Order 317 to examine the reduction of emissions in the natural gas sector in the State.¹⁰ The proceeding is the beginning of the formal stakeholder engagement that is expected to frame the policy and technical considerations of the future of natural gas. Id.

⁸ Rate Counsel is extremely concerned about the issue of stranded costs for gas infrastructure and has urged the Board to provide guidance so that unnecessary costs can be avoided. At the same time, it is clear that in the short term the state's natural gas infrastructure must be maintained to provide safe and adequate service. While some new assets may in fact become stranded, the utilities cannot simply abandon their infrastructure. The technical and safety issues involved in balancing a properly maintained system while limiting investment are extremely complex and appropriately before the Board in another matter.

⁹ N.J.S.A. 48:3-87.9.

¹⁰ Notice of Executive Order 317 Technical Conference, BPU Docket No. GO23020099 (July 10, 2023).

The fact remains that natural gas is currently needed to generate energy and until the State is able to produce enough energy to substitute for the current natural gas demands of its 9.3 million residents, a safe and reliable gas system is imperative. Although in light of the Governor's recent Executive Order 317 issued on February 15, 2023, more well-defined guidance regarding the future of natural gas infrastructure could be forthcoming, the Court cannot rule on future policies or statutes not yet in place. Therefore the Court cannot determine with certainty under these particular set of circumstances when and if the Regulator will become a stranded asset.

CONCLUSION

Rate Counsel respectfully requests that in order to alleviate the potential for additional costs that could ultimately be passed on to ratepayers the Court should affirm the Board's determination that the Regulator is "reasonably necessary for [the] service, convenience or welfare of the public" pursuant to N.J.S.A. 40:55D-19.

Respectfully submitted,

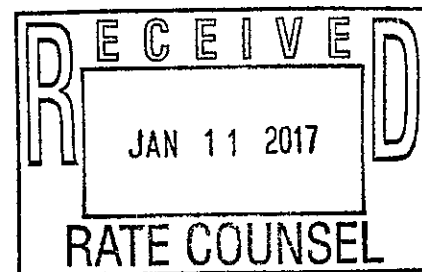
Brian O. Lipman
Director, Division of Rate Counsel

By: */s/Mamie W. Purnell*
Mamie W. Purnell, Esq.
Assistant Deputy Rate Counsel
NJ Attorney ID: 003902011

APPENDIX

 **New Jersey
Natural Gas**

January 10, 2017



VIA FEDERAL EXPRESS OVERNIGHT DELIVERY

The Honorable Irene Kim-Asbury, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of the Petition of New Jersey Natural Gas Company For A Determination Concerning the Holmdel Regulator Station Pursuant to N.J.S.A. 40:55D-19
BPU Docket No.

Dear Secretary Asbury:

Enclosed for filing please find an original and ten (10) copies of the Petition of New Jersey Natural Gas Company ("NJNG" or "Company") appealing a decision of the Holmdel Township Zoning Board of Adjustment denying the Company's application for the construction of a proposed regulator station (the "Regulator Station" or "Facility"). The Company respectfully requests, pursuant to N.J.S.A. 40:55D-19, that the Board determine that, as further described in the attached Petition and supporting testimonies, that the construction of the a proposed Regulator Station, along Holmdel Road in Holmdel Township ("Holmdel") is for the benefit of the residents of Holmdel and neighboring municipalities located in Monmouth County; is necessary to maintain system integrity and reliability and reasonably necessary for the service, convenience or welfare of the public; and that no alternative site or sites are reasonably available to achieve an equivalent public benefit; and issue an order that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Municipal Land Use Law of the State of New Jersey (the "MLUL") shall not apply to the proposed Facility.

Copies of the Petition, including the supporting testimonies and exhibits are also being provided to Caroline Vachier, DAG and Stefanie Brand, Esq, Director, Division of Rate Counsel, Maureen Doloughy, Clerk of Holmdel, Loretta Coscia, Board Secretary, Holmdel Zoning Board of Adjustment, as well as to those individuals listed on the attached Service List.

Kindly acknowledge receipt of this filing by date stamping the enclosed copy of this letter and returning same in the self-addressed, stamped envelope.

Respectfully submitted,

Andrew K Dembia, Esq.
Regulatory Affairs Counsel

C: Service List

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR A DETERMINATION CONCERNING THE HOLMDEL REGULATOR STATION PURSUANT TO N.J.S.A. 40:55D-19	: PETITION : : : DOCKET NO. : :
--	--

**To: THE HONORABLE COMMISSIONERS OF
THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

Petitioner, New Jersey Natural Gas Company (“Petitioner,” “NJNG” or the “Company”), respectfully petitions the New Jersey Board of Public Utilities (the “Board” or “BPU”), pursuant to N.J.S.A. 40:55D-19, as follows:

1. NJNG appeals to the Board from a decision of the Holmdel Township Zoning Board of Adjustment denying the Company’s application for the construction of a proposed regulator station (the “Regulator Station” or “Facility”) along Holmdel Road in Holmdel Township (“Holmdel”). The Company respectfully requests, pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:2-23, that the Board (a) determine that the construction of the Facility for the benefit of the residents of Holmdel and neighboring municipalities in Monmouth County, as more fully described herein, is necessary to maintain system integrity and reliability and reasonably necessary for the service, convenience or welfare of the public, and that no alternative site or sites are reasonably available to achieve an equivalent public benefit; and (b) issue an order that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Municipal Land Use Law of the State of New Jersey (the “MLUL”) shall not apply to the proposed Facility.

Exh. P-4 - Facility Site Plan

Exh. P-5 - Truncated Transcript of Holmdel
Zoning Board of Adjustment – Final
vote (December 7, 2016)

5. NJNG has served notice and a copy of this filing, together with a copy of the annexed Exhibits being filed herewith, upon those individuals identified in the attached service list, including the Director, Division of Rate Counsel, the Director, Division of Law – Office of the Attorney General, and the Clerk of Holmdel Township.

6. As a natural gas “public utility” as that term is defined in N.J.S.A. 48:2-13, NJNG is subject to regulation by the Board for the purpose of assuring that it provides safe, adequate and proper natural gas service to its customers pursuant to N.J.S.A. 48:2-23. As a result, the Company is obligated to, and does, maintain its public utility infrastructure in such condition as to enable it to meet its regulatory obligations to provide the requisite service. That infrastructure consists of the property, plant, facilities and equipment within NJNG’s natural gas distribution and transmission system throughout its service territory.

7. NJNG is committed to providing safe, adequate and proper service in accordance with N.J.S.A. 48:2-23. Consistent with industry practice and its ordinary capital spending planning cycle, NJNG engages continuously in the construction, operation and maintenance of its public utility infrastructure, including the property, plant, facilities and equipment that comprise the natural gas distribution and transmission system utilized to serve the approximately 523,000 customers throughout the NJNG service territory. This effort includes the replacement, reinforcement and expansion of the Company’s infrastructure, (*i.e.*, its property, plant, facilities and equipment) to maintain the reliability of its distribution and transmission system and to ensure the continuation of safe, adequate and proper service.

with N.J.A.C. 14:7 and the Federal Regulations for the Transportation of Natural and Other Gas by Pipeline, Part 192, Title 49 of the Code of Federal Regulations.

10. The Facility will be located within an easement on private property. Specifically, it will occupy an easement area of approximately 100 feet-by-85 feet on a parcel of land located on Block 13, Lot 14 in Holmdel (the "Proposed Site"). The street address for the Proposed Site is 970 Holmdel Road, Holmdel, New Jersey, where Cornerstone Power Holmdel ("Cornerstone") operates a solar farm; the Regulator Station will be situated on a small section of the property between the solar farm and Holmdel Road on which no solar panels are located. The location and design of the Facility are more fully described in Exhibits P-1, P-2, P-3 and P-4 attached hereto.

III. NEED FOR THE HOLMDEL REGULATOR STATION FACILITY

11. As more fully described in the accompanying testimony of Kraig Sanders (Exhibit P-1), the operational need for the Regulator Station arises from NJNG's 2012 upgrade of the transmission line in Holmdel. Specifically, in 2012, as part of its efforts to continually upgrade and modernize its system, NJNG replaced the existing transmission line located in Holmdel due to its age and to comply with federal pipeline integrity requirements. The upgraded transmission line has a maximum allowable operating pressure ("MAOP") of 722 psig.

12. The newly upgraded transmission system connects to NJNG's local distribution system, which operates at approximately 100 psig. The Regulator Station is needed to adequately, safely and reliably accomplish the more than 600 psig reduction in gas pressure between the transmission system and the distribution system, so that pressure is reduced for the safe and efficient delivery of gas to NJNG's local customers.

13. Critically, the Regulator Station will be equipped with an aboveground natural-gas fueled heating unit designed to pre-heat the natural gas traveling through the regulators connecting

cases, ground moisture around the downstream underground piping can freeze, causing upheaval of the surrounding area or roadway.

16. The loss of gas service to a segment of Holmdel could prove devastating to the affected customers, especially in the winter when heat and hot water are critical. If, for example, a regulator failure resulted in the loss of service to dozens or even a hundred homes, there would be a significant delay in service restoration. That is because once gas service is interrupted, NJNG cannot simply flip a switch to instantaneously turn service back on after the regulator is thawed and repaired (a process that itself would take some time). Rather, before service could be restored, NJNG personnel would have to visit each of the affected premises to manually turn off the gas at each service line. Once NJNG accomplished that task, it could re-pressurize the gas mains, but would have to return again to each individual affected property in order to turn the gas back on manually and re-light the pilot for each appliance and furnace. If NJNG did otherwise—if it simply turned the gas back on en masse without visiting each property—each premises with unlit pilot lights would slowly fill up with gas, which could result in a dangerous, potentially, life-threatening condition. If 50 or 100 houses lost service due to a regulator station failure, the restoration process could leave homes without heat for days, which in the winter months could lead to significant damage to homes (through freezing pipes, etc.) and/or the health and well-being of residents.

17. As is customary in the industry, NJNG will address the pressure-reduction icing effect at the Regulator Station—as it does at approximately 35 other similar stations—by pre-heating the transmission-line natural gas with a heater located at the Regulator Station prior to the pressure reduction. The heater will allow NJNG to heat the natural gas to approximately 80 to 90 degrees Fahrenheit, so the gas temperature after the pressure reduction stays above freezing, preventing ice from encasing the equipment and ensuring reliable operation of the Facility and the

and Holmdel Road). Second, the site had to be large enough to accommodate all of the Facility's related equipment (most notably, the heating unit). Third, the Regulator Station should be located in close proximity to the transmission line for efficiency and security reasons. Fourth, there are several types of properties that NJNG either avoids or cannot use for its gas delivery facilities. Most significantly, NJNG makes every effort to avoid residential areas, and instead focuses on properties with commercial, industrial or utility zoning. The Company likewise avoids wetlands and low lying areas because they present a heightened risk of flooding and, more importantly, freezing during the winter months. Further, NJNG looks for sites with no environmental or contamination issues, and prefers sites with little or no required tree clearing to further minimize any environmental impact. And, again to minimize any environmental impact, NJNG prefers to build its facilities on already developed land, as it typically only requires a relatively small parcel. Also, NJNG is prohibited from locating its facilities on Farmland Preserved properties under any circumstances, and on properties purchased with Green Acres funding without first getting difficult to obtain authorization from the State.

21. With those restrictions in mind, NJNG's Site Analysis focused on determining the most operationally suitable location that would enable NJNG to improve and reinforce existing service reliability with minimal impact to the surrounding properties. To that end, NJNG's site review and analysis considered potential impacts of each possible site from several perspectives: (1) impacts to residential areas; (2) existing environmental conditions; and (3) engineering considerations. Potential properties located in residential neighborhoods and/or close to other community-valued buildings (e.g. schools) were disqualified from consideration, because the Facility would not typically be permitted on those properties due to local community discontentment and restrictions under Holmdel zoning ordinances. Existing environmental

significantly, NJNG was unable to utilize the fourth alternative site because the tenant on that property, Vonage, refused to grant NJNG an easement after extensive, time-consuming negotiations, thereby taking that property off the table as a viable alternative. As a result, NJNG was left with only one possible location for the Regulator Station: the Proposed Site.

24. In any event, the Proposed Site is the most suitable location for the Regulator Station. The Site is of sufficient size, presents a natural fit to co-locate NJNG's station with another energy company's facility (the Cornerstone solar farm), and allows NJNG to locate the Facility adjacent to the transmission line. Significantly, the site is located at the southern end of NJNG's Holmdel transmission line, which will minimize the risk of customer exposure to outages. Moreover, the zoning for the site is non-residential and conditionally permits public utilities. There are no environmental constraints that would impact the development of a regulator station at this site. The site is not encumbered with Green Acres restrictions. There are no low elevations in the easement area, and thus no flooding concerns, and NJNG is not required to clear a significant number of trees. Moreover, NJNG successfully obtained an easement from the relevant parties.

25. In sum, based on the Site Analysis (as summarized above and detailed in the testimony of Marc Panaccione (Exhibit P-2)), the location best suited for the Facility is the Proposed Site. That location results in the least combined impacts to residential areas and the environment, while offering a feasible, and indeed preferable, engineering design. Moreover, NJNG's alternative site analysis establishes that there are no reasonably available alternative sites for the Regulator Station that will achieve an equivalent public benefit.

V. JURISDICTION AND REGULATORY STANDARD FOR APPROVAL

26. Holmdel's land use ordinances and regulations permit, under certain circumstances, the installation and operation of public utility facilities, public service infrastructure, public

NJNG further demonstrated before the Zoning Board the suitability of the Proposed Site and that there are no reasonable alternative sites available, even though it had no obligation to do so (because the Facility is an inherently beneficial use).

29. The first Holmdel Zoning Board hearing on NJNG's application took place on February 3, 2016, followed by an onsite inspection of the Proposed Site on February 27, 2016. Six subsequent hearings were conducted on March 2, May 18, July 20, August 17, September 21 and December 7, 2016. During those seven hearings, the Company presented voluminous testimony from six witnesses (nearly all of whom testified and/or answered Board and public questions on multiple occasions). Two witnesses—Mr. Kraig Sanders and Mr. Marc Panaccione—are NJNG employees directly involved in the design, construction and operation of the proposed Facility and/or the Site Analysis. The four other witnesses were independent outside experts in the fields of engineering, landscape architecture, noise impacts and planning.

30. NJNG made significant adjustments to its original site plan based on comments and concerns raised by the Zoning Board and members of the public during the numerous hearings. For example, based on concerns regarding the possibility of vehicular collision with the Facility (an extremely unlikely event), NJNG proposed to expand an earthen berm to surround the front and two sides of the property, install bollards and a New Jersey Department of Transportation ("NJDOT") compliant guardrail. Also based on concerns raised during the Zoning Board hearings, NJNG proposed to (i) install bollards and a NJDOT-compliant guardrail; (ii) expand an earthen berm with a retaining wall to surround the front and two sides of the property, which would significantly increase the height of the proposed landscaping; and (ii) lower the ground level of the Facility in order to reduce, if not completely remove, any visual impacts to the surrounding homeowners.

34. The Appellate Division first interpreted the “necessary for the service, convenience of welfare of the public” standard (as set forth in a predecessor statute) in In re Hackensack Water Co., 41 N.J. Super. 408 (App. Div. 1956). In Hackensack Water, the Appellate Division concluded that the legislative intent was to empower the BPU to approve projects that are in the public interest, even when those projects conflict with local interests as “expressed through prohibiting provisions of a municipal zoning ordinance.” Id. at 419-20. The Appellate Division explained that while municipal ordinances are important to the public welfare, “such regulation is basically from the local aspect for a local public purpose,” and “the legislative intent is clear that such local regulation, however beneficent and important, is of secondary importance to the broader public interest involved in assuring adequate [] service to a much larger area.” Id. at 423.

35. In Petition of Monmouth Consol. Water Co., 47 N.J. 251 (1966), the New Jersey Supreme Court summarized the policies underlying the standard set forth in N.J.S.A. 40:55D-19 (again in the context of the predecessor statute) as follows:

In enacting this section the Legislature recognized that local municipal authorities are ill-equipped to comprehend adequately the needs of the actual and potential users of the utility’s services beyond as well as within their territorial limits. The lawmakers knew that if the zoning power of a municipality were paramount, it would probably be exercised with an eye toward the local situation and without consideration for the best interests of the consumers at large in other communities whose convenience and necessity require service. The exemption [from local zoning regulation] also signifies an awareness that if the local authorities were supreme the Board of Public Utility Commissioners could not compel a utility to provide adequate service if the zoning ordinance conflicted with the need for expansion or extension of its facilities within the municipality.

Id. at 258.

36. Soon after Hackensack Water, the New Jersey Supreme Court, in In re Public Service Electric & Gas Co., 35 N.J. 358 (1961) (“PSE&G”), announced a series of guiding

characteristics of the affected land and surrounding neighborhood (and the effect of the proposed use on that land and neighborhood). **Second**, the public utility must demonstrate that the site, method or route chosen for the proposed project is the best available, and thus its use is reasonably necessary, based on consideration of alternative sites, methods and routes and their comparative advantages and disadvantages to all interests involved, including costs.

38. Here, NJNG has presented overwhelming evidence on this Petition establishing both of these requirements.

VI. REASONABLE NECESSITY AND BEST AVAILABLE SITE

39. As demonstrated above and in the accompanying testimonies (particularly that of Kraig Sanders), the Facility is required in order to maintain the integrity and reliability of NJNG's local distribution system because it will allow the Company to reliably, efficiently and safely achieve the 600 psig reduction in gas pressure between the upgraded transmission system in Holmdel and the local distribution system, which serves customers in Holmdel and surrounding municipalities. The design of the Regulator Station—most importantly, the above-ground heating unit—will prevent the regulators and associated equipment at the Facility from becoming encased in thick ice, which could well result in a harmful loss of service to the customers served by the local distribution system. The present configuration of NJNG's delivery apparatus does not adequately accomplish this goal because, inter alia, the temporary regulator being used as a stop gap does not employ and cannot accommodate a heater. As a result, NJNG has demonstrated that the proposed Facility is reasonably necessary for the service, convenience or welfare of the entire public served by the public utility.

40. Moreover, NJNG has presented significant evidence establishing that there are no reasonably available alternatives that could achieve an equivalent public benefit. As detailed

Municipal Land Use Ordinances or Regulations promulgated under the MLUL shall not apply to the Regulator Station.

VII. OTHER APPROVALS

43. The Company has applied for and obtained a Freehold Soil Erosion & Sediment Control Permit and approval from the Monmouth County Planning Board.

44. A New Jersey Department of Environmental Protection (“DEP”) Air Permit is not required due to the insignificant source of emissions. Also, a DEP Land Use Permit is not required due to the limited scope of the Facility and the absence of environmentally sensitive features at the Proposed Site.

45. NJNG will apply for a Monmouth County Road Opening Permit once the approval requested herein has been obtained from the Board.

VIII. REQUEST FOR EXPEDITED RELIEF

46. NJNG designed the Facility to provide much needed reliability and supply security to the residents of Holmdel and surrounding municipalities. As a result, NJNG requests an expedited review of this Petition to avoid any delays in the completion of the Regulator Station, so that it will be operational by the 2017-2018 heating season.

WHEREFORE, New Jersey Natural Gas Company requests that the Board:

- (1) retain jurisdiction over this matter, designate a Commissioner as Presiding Officer, set a date for the submission of Motions to Intervene, establish an expedited hearing date and procedural schedule, and designate the time and manner of notice and persons in interest to be given notice;

VERIFICATION

MARK R. SPERDUTO of full age, being duly sworn according to law, on his oath deposes and says:

1. I am Senior Vice President, Regulatory Affairs for New Jersey Natural Gas Company, the Petitioner in the foregoing Petition.

2. I have read the annexed Petition, along with the Exhibits attached thereto, and the matters and things contained therein are true to the best of my knowledge and belief.

Mark Spurduto

Mark R. Spurduto

Sworn and subscribed to)
before me this 10th day)
of January 2017)

Kathleen Kleinertz

SUBSCRIBED AND SWORN TO
BEFORE ME ON THIS DAY

JAN 10 2017

KATHLEEN KLEINERTZ
NOTARY PUBLIC, STATE OF NEW JERSEY
MY COMMISSION EXPIRES 08/30/2021



NEW JERSEY NATURAL GAS COMPANY

**PREPARED DIRECT TESTIMONY OF
KRAIG SANDERS**

1 **I. INTRODUCTION**

2 **Q. Please state your name, affiliation, business address and educational background.**

3 **A.** My name is Kraig Sanders, and I am Director of Pressure Management & Transmission
4 for New Jersey Natural Gas Company (the “Company” or “NJNG”). My business address
5 is 1415 Wyckoff Road, Wall, New Jersey 07719. I have been employed by the Company
6 for over 18 years. I have a Bachelor’s Degree in Civil Engineering and Software
7 Engineering from Stanford University.

8 **Q. Please describe your responsibilities as Director of Pressure Management &**
9 **Transmission for NJNG.**

10 **A.** I am responsible for the maintenance and operation of NJNG’s metering and regulator
11 stations, as well as the Company’s gas control center, which remotely handles the
12 operations and control systems for NJNG’s entire delivery system. I am also responsible
13 for the maintenance and operations of NJNG’s transmission facilities.

14 **Q. What is the purpose of your testimony in this proceeding?**

15 **A.** My testimony describes the need for NJNG’s new regulator station (the “Regulator
16 Station” or “Facility”) in Holmdel Township (“Holmdel”), as well as NJNG’s efforts to
17 ensure the safe, reliable and adequate delivery of natural gas to its customers.

18 **Q. Please provide an overall summary of the Facility.**

19 **A.** As explained more fully below, the Facility is needed to support the reliability and integrity
20 of NJNG’s local distribution system, especially in Holmdel and the surrounding areas,

1 and Ocean Divisions. The Company operates a network of 227 miles of large diameter
2 transmission lines, approximately 7,200 miles of distribution mains, and approximately
3 473,400 service lines exceeding 7,100 miles in total length. NJNG's distribution mains
4 range in diameter from 1.25 to 16 inches.

5 The distribution system includes various other components and facilities, including
6 line valves, pressure-reducing regulators and meter stations. NJNG's system also includes
7 two liquefied natural gas peak shaving facilities that provide important pressure support to
8 the local distribution system.

9 The configuration of NJNG's system varies depending on a number of factors,
10 including customer demand, population density and pipe vintage. Some segments of
11 NJNG's system operate at a maximum allowable operating pressure ("MAOP") of 722
12 psig, while others (e.g., distribution mains and service lines) operate at various lower
13 pressures. NJNG designed the system based on engineering requirements and design day
14 criteria in order to provide safe, adequate and reliable service to NJNG customers
15 throughout the entire year.

16 **Q. Please describe NJNG's operational goals and objectives.**

17 **A.** The Company's primary operational goal is to provide safe and reliable service to its
18 customers. Indeed, safety and reliability are essential to the health and well-being of the
19 residents and businesses in the communities NJNG serves, and thus of paramount
20 importance to the NJNG employees responsible for operating the system. Reliability
21 requires planning to meet customer needs during cold weather when demand is highest, as
22 well as all other times when unplanned major storm events or system disruptions may
23 occur. This is essential because natural gas is a critical lifeline service, especially during

1 transmission system, which transports large volumes of gas over long distances at high
2 pressure (an MAOP of 722 psig), and the local distribution system, which operates at
3 approximately 100 psig.

4 **III. NEED FOR THE HOLMDEL REGULATOR STATION**

5 **Q. Why is the Regulator Station needed within the NJNG delivery system?**

6 **A.** The need for the Regulator Station stems from NJNG's 2012 upgrade to the new Holmdel
7 transmission line. Specifically, the Regulator Station is needed to adequately, safely and
8 reliably accomplish the more than 600 psig reduction in gas pressure between the
9 transmission system and the distribution system, so that pressure is reduced for the safe
10 and efficient delivery of gas to NJNG's local customers. For the reasons set forth below,
11 the temporary regulator station that is currently managing the 600 psig pressure reduction
12 is an interim solution on which NJNG cannot rely to ensure the adequate, reliable and
13 efficient delivery of natural gas on a long-term basis.

14 **Q. What other equipment is necessary to operate the Regulator Station safely, efficiently
15 and reliably?**

16 **A.** Most significantly, NJNG will equip the Regulator Station with an aboveground natural-
17 gas fueled heating unit designed to pre-heat the natural gas traveling through the regulators
18 connecting the transmission system to the distribution system. This heating unit is a critical
19 component of the Regulator Station precisely because of the 600 psig pressure reduction
20 that will take place from the transmission system to the distribution system. Specifically,
21 due to the thermodynamic principle known as the Joule-Thomson Effect, that significant
22 pressure reduction will result in an approximately 40 degree Fahrenheit decrease in the
23 temperature of the natural gas running through the regulators. (For every 14.7 psig
24 reduction, the temperature of natural gas drops one degree Fahrenheit.)

1 That is because once gas service is interrupted, NJNG cannot simply flip a switch to
2 instantaneously turn service back on after the regulator is thawed and repaired (a process
3 that itself could take some time). Rather, before service could be restored, NJNG personnel
4 would have to visit each of the affected premises to manually turn off the gas at each service
5 line. Once NJNG accomplished that task, it could re-pressurize the gas mains, but would
6 have to return again to each individual affected property in order to turn the gas back on
7 manually and re-light the pilot for each appliance and furnace. If NJNG did otherwise—if
8 it simply turned the gas back on en masse without visiting each property—each premises
9 with unlit pilot lights would slowly fill up with gas, which could result in a dangerous,
10 potentially, life-threatening condition. If 50 or 100 houses lost service due to a regulator
11 station failure, the totality of the restoration process could leave homes without heat for
12 days, which in the winter months could lead to significant damage to homes (through
13 freezing pipes, etc.) and/or the health and well-being of residents.

14 As is customary in the industry, NJNG will address the pressure-reduction icing
15 effect at the Regulator Station by pre-heating the transmission-line natural gas with a heater
16 located at the Facility prior to the pressure reduction. The heater will allow NJNG to heat
17 the natural gas to approximately 80 or 90 degrees Fahrenheit, so the temperature after the
18 pressure reduction stays above freezing, preventing ice from encasing the equipment and
19 ensuring reliable operation of the Facility and the local distribution system. In short, the
20 heating unit is an extremely important component of the Regulator Station and is critical
21 to NJNG's ability to provide safe, adequate and reliable natural gas service to the residents
22 of Holmdel and the surrounding municipalities. Indeed, as discussed further below, one of
23 the major deficiencies of the current temporary regulator station and reasons why it is not

1 **Q. Please identify other operational benefits of the Facility.**

2 **A.** As explained above, because the Regulator Station will more reliably and efficiently
3 manage the significant pressure reduction from that upgraded transmission line to
4 distribution system, the proposed Facility will allow the Company to operate the flow of
5 natural gas to the residents of Holmdel and the surrounding municipalities more efficiently,
6 reliably and safely. Critically, the proposed Facility is designed and intended primarily to
7 provide natural gas service to the residents of Holmdel, though it will certainly also benefit
8 customers in adjacent communities. In fact, NJNG estimates that the Regulator Station
9 will allow it to provide improved service to 5,552 residential meters (serving 6,566
10 Holmdel residences), or over 98% of the municipality, as well as 310 active commercial
11 meters. Further, because it will be equipped with a heater, the Regulator Station will
12 eliminate the need for the Company to dispatch a work crew to inspect and monitor the
13 temporary regulator.

14 **Q. Does the Company have heaters on other regulators associated with its facilities?**

15 **A.** Yes. NJNG has heaters at approximately 35 regulator stations similar to the Proposed
16 Facility, many of which have been operating for decades.

17 **Q. Is it standard industry practice for the Company to continue operating the temporary
18 regulator facility?**

19 **A.** No. A regulator station fed by a high-pressure transmission line requires a heater and filter
20 in order to properly operate and maintain the natural gas delivery system over the long
21 term.

22 **Q. Will the Regulator Station be operated in compliance with all federal and state safety
23 standards?**

NEW JERSEY NATURAL GAS COMPANY

PREPARED DIRECT TESTIMONY OF
MARC PANACCIONE

1

I. INTRODUCTION

2 **Q. Please state your name, affiliation, business address and educational background.**

3 **A.** My name is Marc Panaccione, and I am a Senior Engineer for New Jersey Natural Gas
4 Company (the "Company" or "NJNG"). My business address is 1415 Wyckoff Road,
5 Wall, New Jersey 07719. I have been employed by the Company for over 12 years. I have
6 a Bachelor of Science in Mechanical Engineering from the University of Maryland and an
7 MBA from Rutgers University.

8 **Q. Please describe your responsibilities as a Senior Engineer for NJNG.**

9 **A.** As a Senior Engineer, I am responsible for the engineering design, project management,
10 construction oversight and system planning of NJNG's transmission and distribution
11 system.

12 **Q. What is the purpose of your testimony in this proceeding?**

13 **A.** My testimony describes the location, design and construction of NJNG's proposed new
14 regulator station (the "Regulator Station" or "Facility") in Holmdel Township
15 ("Holmdel"). I will also describe NJNG's process for considering alternative sites for the
16 Facility.

17 **II. LOCATION, DESIGN AND CONSTRUCTION OF THE FACILITY**

18 **Q. Please provide an overall summary of the Facility.**

19 **A.** As explained more fully in the testimony of Kraig Sanders, NJNG's Director of Pressure
20 Measure and Transmission, the Facility will support and enhance the reliability and

1 A. Yes. As noted above, the Facility will consist of a filter, heater, two regulator
2 runs, associated piping, and a control box. The Regulator Station's filter, which acts as a
3 scrubber cleaning the gas of impurities, will be approximately 7 feet long, 3 feet wide and
4 2 feet tall, and will be placed on a concrete pad. The heating unit, which is manufactured
5 by Cold Weather Technologies, is the largest piece of equipment. It is 30 feet long and 7½
6 feet wide, and has three vent stacks, each of which is 10 inches in diameter and 15 feet tall.
7 The regulators will be connected to 6-inch and 8-inch piping primarily located 3 feet
8 underground. A small section of the piping will be above-ground, where the regulators are
9 located. The Facility will also have a control box housing communications and electrical
10 equipment.

11 The Proposed Site will be covered with crushed stone and equipped with a fence
12 with privacy slats for security purposes. An earthen berm in front of the Facility will serve
13 two purposes: (1) obscuring the Facility from view; and (2) protecting it from vehicular
14 impact. NJNG will also install a New Jersey Department of Transportation ("NJDOT")
15 compliant guardrail in front of the Facility (facing the roadway) and a retaining wall around
16 three of its sides, as well as protection bollards to replace traditional fence posts. The
17 Facility's perimeter will be extensively landscaped with a variety of trees and shrubs to
18 create a buffer and obscure visibility of the Facility to the general public.

1 the most suitable location for the Facility that would have a minimal impact on Holmdel
2 and its residents. As an initial matter, several siting constraints guided and informed the
3 Site Analysis, and ultimately limited the available site options.

4 First, it was important from an operational and engineering standpoint to locate the
5 Regulator Station as close as possible to the southern end of the Holmdel transmission line
6 (where the line begins at the intersection of Newman Springs Road and Holmdel Road).
7 That is because the pump station for the Holmdel transmission line (which feeds Holmdel
8 and the surrounding areas) is located at the southern end of the line. Siting the Regulator
9 Station near that pump station will allow NJNG to feed that station, and provide natural
10 gas to customers from that location northward, where the supply is back-filled from other
11 pump stations. A site at the southern end of the line is also optimal from a system-design
12 standpoint in light of the locations of other pump stations within NJNG's system (NJNG
13 has two other gas feeds to the north and southeast). NJNG prefers to have adequate spacing
14 between its various feeds to minimize system vulnerability and service interruptions in the
15 event one of the pump station becomes inoperable.

16 Second, the chosen site had to be large enough to accommodate the proposed
17 Facility. As explained above, the proposed Facility requires an area of approximately 100
18 feet-by-85 feet in order to house all of the necessary equipment, including a filter, heater,
19 two regulator runs, associated piping, and control box, as well as provide for the buffering
20 and screening devices explained above.

21 Third, the Regulator Station should be located in close proximity to the
22 transmission line because the gas delivery system experiences a loss in pressure, and a
23 corresponding dip in efficiency and reliability, when a regulator station is located at a

1 NJNG's Site Analysis considered potential impacts of each possible site from several
2 perspectives: (1) impacts to residential areas; (2) existing environmental conditions; and
3 (3) engineering considerations. Potential properties located in residential neighborhoods
4 and/or close to other community-valued buildings (e.g. schools) were disqualified from
5 consideration, because the Facility would not typically be permitted on those properties
6 due to local community discontentment and restrictions under Holmdel zoning ordinances.
7 Existing environmental conditions—e.g., tree clearing, wetlands, contaminated sites,
8 Preserved Farmland and Green Acres habitats—were also relevant factors; NJNG avoided
9 potential sites that had one or more of those environmental conditions. Finally, NJNG's
10 engineering considerations included the importance of a location at the southern end of the
11 transmission line; minimization of the Facility's distance to the transmission line; adequacy
12 of the property's size; sufficient access for inspection, maintenance and repair; property
13 elevation levels; and security.

14 **Q. Were alternative locations considered?**

15 **A.** Yes. Even though it is important to locate the Regulator Station as far south as possible,
16 NJNG examined the entire transmission line corridor between Route 35 (at the northern
17 end) and Newman Springs Road (at the southern end) for potential locations. As the below
18 discussion demonstrates, NJNG's analysis revealed very few possibly suitable locations
19 for the Regulator Station. To aid in that discussion, Exhibit P-3 to the Petition is a map
20 depicting the transmission line corridor and adjacent zoning/environmental restrictions that
21 was presented to the Holmdel Zoning Board.

22 As an initial matter, the northernmost portion of the corridor on South Laurel
23 Avenue (at and near the intersection of Route 35) offers no suitable locations because it is

1 is encumbered by Green Acres deed restrictions that permit it to be used solely for
2 recreation and conservation purposes.

3 Continuing further south along the transmission line corridor, the properties on
4 Holland Road are zoned for and have residential developments, which again makes them
5 unusable. In addition to this disqualifier, the properties adjacent to this segment of the
6 transmission line have significant elevation changes, would require tree clearing and/or
7 have wetlands along the roadside.

8 On South Holland Road, the properties are once again zoned for and have
9 residential developments. Also, the area has significant elevation changes, heavily wooded
10 areas, roadside wetlands, and multiple Green Acres deed restricted properties.

11 The next area of examination is that occupied by the Garden State Parkway
12 ("GSP"), which crosses over South Holland Road. The New Jersey Turnpike Authority
13 controls the GSP and has a strong policy and practice of refusing to encumber its property
14 with easements. The GSP property is also zoned as Public Land, which does not permit
15 public utilities. Thus, the GSP property was not an option.

16 After the GSP, the transmission line corridor continues along South Holland Road
17 before turning onto Crawfords Corner Road. That entire area is zoned for and has
18 developed residential properties. Also, Holmdel High School is located at 36 Crawfords
19 Corner Road. There are wetlands throughout the High School property, and the non-
20 wetland section is developed with a football field, making it unusable. The High School
21 property is also zoned as Public Land, which does not permit public utilities.

22 Next along the corridor is Longstreet Road, which borders Holmdel Park on the
23 entire north side; the park is Green Acres encumbered and zoned as Public Land, thereby

1 Holmdel Road includes an office/laboratory zone that has been developed with office
2 complexes, the Cornerstone solar farm and a dense business district. The Proposed Site of
3 the Regulator Station is on a portion of the solar farm property located within that
4 office/laboratory zone.

5 **Q. Please describe why NJNG chose the subject location in Holmdel for the Facility and**
6 **why it is the best suited location for that use?**

7 A. The Regulator Station will be located on a small portion of a 33.3 acre site that is already
8 improved with a solar farm. Exhibit P-4 attached to the Petition, which was presented to
9 the Zoning Board, contains the site plans for the Facility at this location. NJNG proposes
10 to construct the Facility within a 100 foot-by-85 foot easement area located outside the
11 fence of the solar farm. This site is of sufficient size and it is a natural fit to co-locate the
12 station with another energy company's facility, especially since the Proposed Site allows
13 NJNG to locate the Facility adjacent to the transmission line. Significantly, the Proposed
14 Site is located at the southern end of NJNG's Holmdel transmission line, which (as
15 explained above) will minimize the risk of customer exposure to outages. Moreover, the
16 zoning for the site is non-residential and conditionally permits public utilities. There are
17 no environmental constraints that would impact the development of a regulator station at
18 this site. The site is not encumbered with Green Acres or Farmland Preservation
19 restrictions. There are no low elevations in the easement area. And NJNG is not required
20 to clear a significant number trees. Finally, as discussed below, NJNG has been able to
21 obtain an easement for the Proposed Site.

22

1 addressing Vonage's concerns in the middle of October 2013, NJNG drafted and circulated
2 a final easement for execution. At the end of that month, however, Vonage notified NJNG
3 that it would not consent to the easement, and negotiations ended. As a result, NJNG was
4 left with only one possible location for the Regulator Facility: the Proposed Site.

5 **Q. Did NJNG consider any property owned by the Township of Holmdel?**

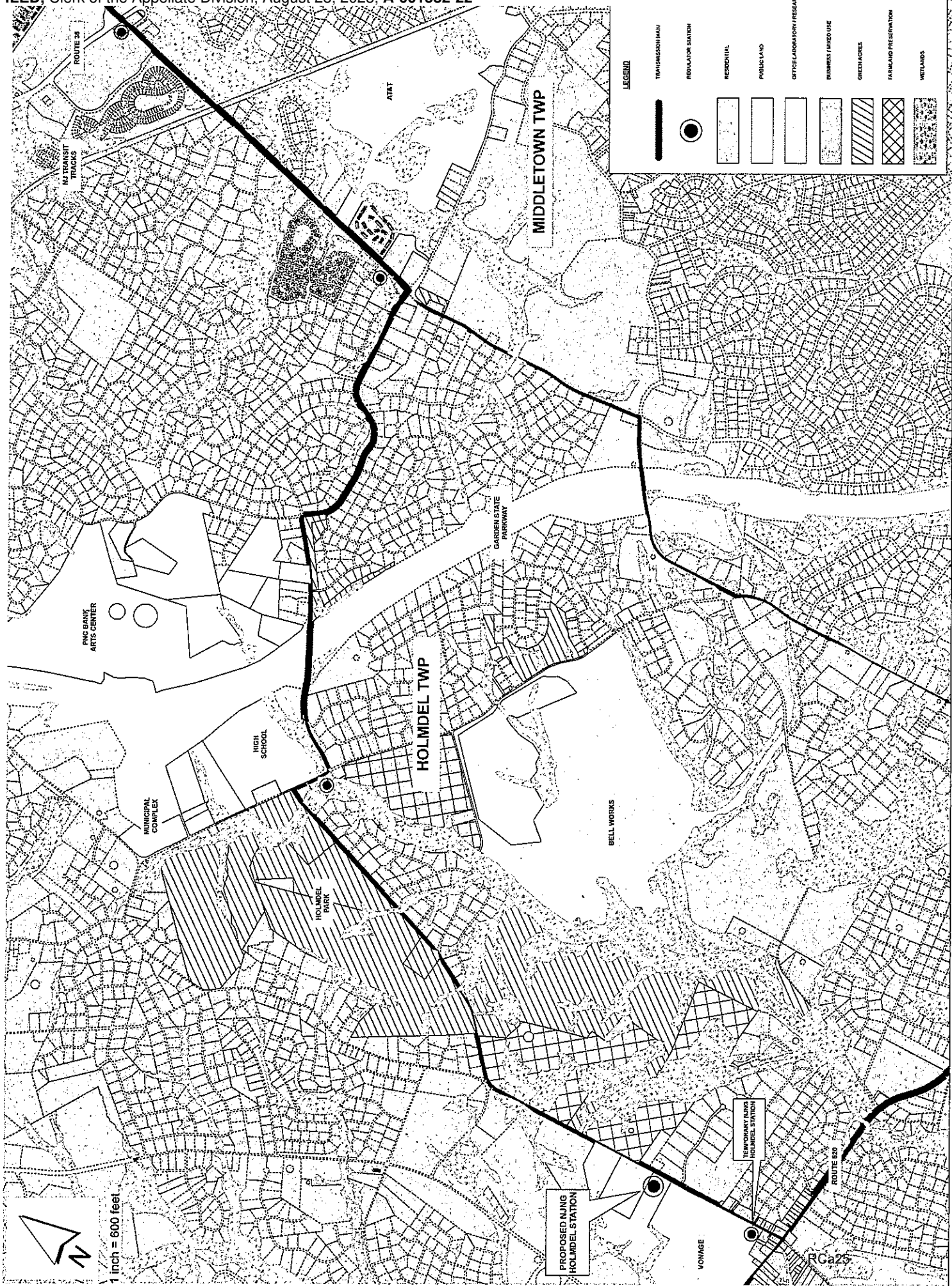
6 A. Based on the Site Analysis, NJNG concluded that there is no suitable property owned by
7 Holmdel in close proximity to the transmission line.

8 **Q. Can you please describe NJNG's efforts to date to obtain required land use approvals
9 from Holmdel Township?**

10 A. Yes. On March 17, 2015, NJNG filed an application with the Holmdel Zoning Board of
11 Adjustment ("Holmdel Zoning Board") requesting Site Plan Approval, "C" and "D"
12 variances, and Conditional Use approval. Specifically, NJNG sought variances (a) to
13 construct the Regulator Station as an additional principal use on the site; (b) to construct
14 the Regulator Station within the buffer required between a non-residential use and
15 residential zone (a 384.25 feet buffer is required, but NJNG proposes one of 89.78 feet);
16 and (c) to install an eight-foot-high fence with wood slats in the front, side and rear yard
17 (only eight-foot-high open wire fencing is permitted). NJNG also requested (a) relief from
18 two conditions of the Zoning Board's prior resolution approving the Cornerstone solar
19 farm; (b) variances for NJNG's proposed sign and driveway access width (to the extent the
20 Zoning Board deemed such variances necessary); and (c) several design waivers.

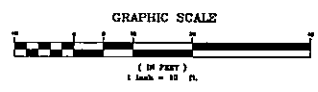
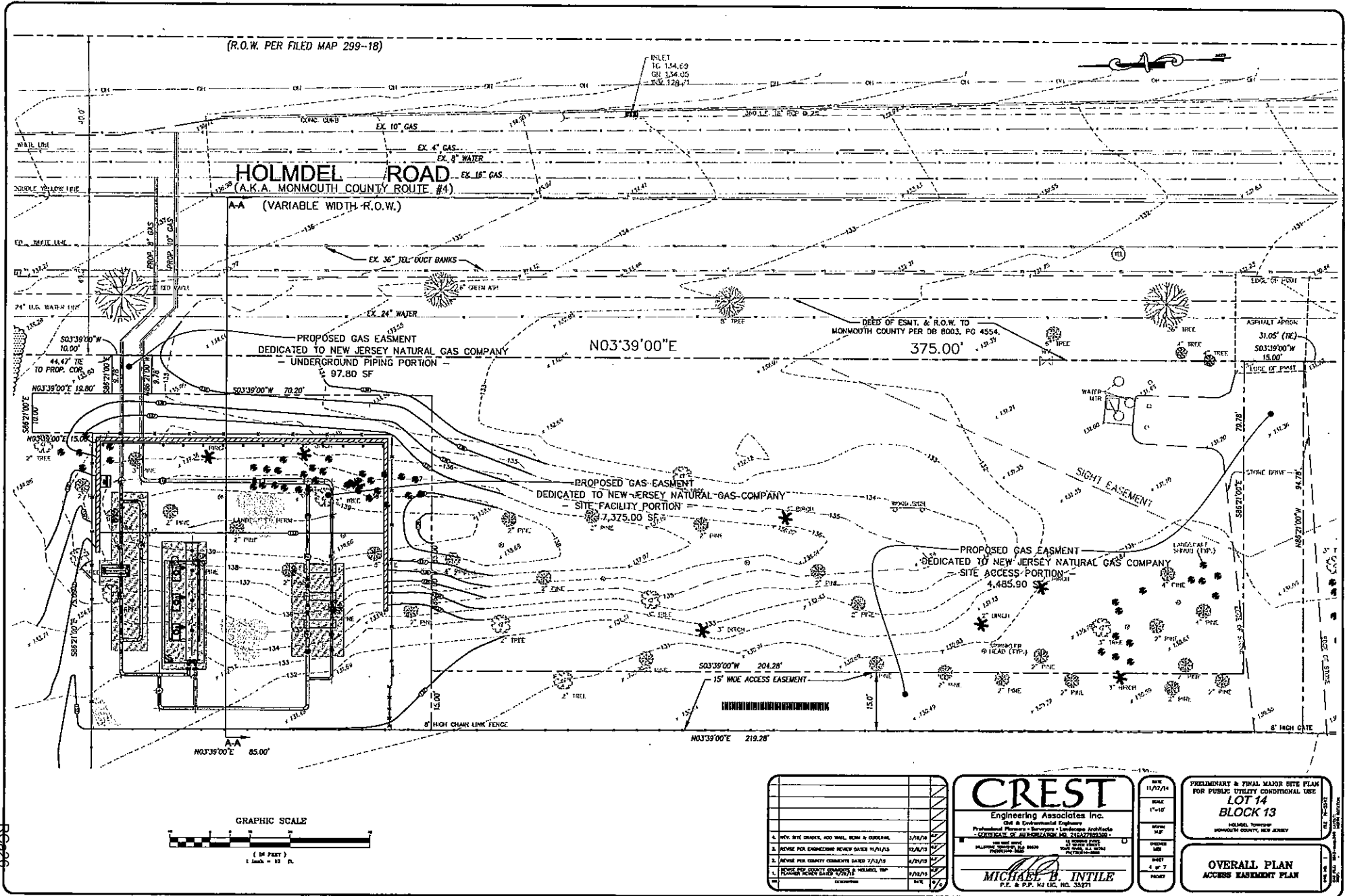
21 After seven lengthy and in-depth hearings over 10 months (at which NJNG
22 presented extensive testimony from six witnesses), the Holmdel Zoning Board denied

HOLMDEL TOWNSHIP ZONING BOARD



1 inch = 600 feet

RCa26



1. REV. SITE GRADER, ADD WALL, BENCH & SUBGRADE	5/26/24
2. REVIEW PER ENGINEERING REVIEW DATED 11/14/23	12/14/23
3. REVIEW PER COUNTY COMMENTS DATED 3/23/24	6/12/24
4. REVISED PER COUNTY COMMENTS DATED 8/12/24	8/12/24
5. PREPARED FOR SUBMITTAL	8/12/24

CREST
Engineering Associates Inc.
Civil & Environmental Engineers
Professional Planners & Surveyors • Landscape Architects
CORPORATE OFFICE: 1000 WASHINGTON BLVD., SUITE 200
ROSELAND, NJ 07068
TEL: 973-261-1100
FAX: 973-261-1101
WWW.CREST-ENR.COM

Michael B. Intile
MICHAEL B. INTILE
P.E. & P.P., N.J. LIC. NO. 33871

DATE: 11/27/24
SCALE: 1"=10'
SHEET: 4 OF 7
PROJECT: PRELIMINARY & FINAL MAJOR SITE PLAN FOR PUBLIC UTILITY CONDITIONAL USE LOT 14 BLOCK 13 HOLMDEL TOWNSHIP MONMOUTH COUNTY, NEW JERSEY

OVERALL PLAN
ACCESS EASEMENT PLAN

ROADS

Holmdel township NJNG 12-16_1.txt

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-1 HOLMDEL ZONING BOARD OF ADJUSTMENT
2 COUNTY OF MONMOUTH - STATE OF NEW JERSEY

3 -----
4 REGULAR MEETING FOR: TRANSCRIPT OF
5 NEW JERSEY NATURAL GAS COMPANY PROCEEDINGS
6 Wednesday, December 7, 2016
7 -----

8
9 8:00 p.m.

10 BEFORE:

11 DEMETRI ORFANITOPOULOS, Chairman
12 VALERIE AVRIN-MARCIANO
13 ROB JAFFE
14 ART FRANK
15 THOMAS SCARANO
16 ANTHONY PESCE
17 FRANK AINELLO

18 ALSO PRESENT:

19 RICK DeNOIA, ESQ., Board Attorney
20 GREGORY PLOUSSAS, P.E., Board Engineer
21 MEGAN STANLEY, P.P., Board Planner
22 LORETTA COSCIA, Board Secretary

23
24 LISA NORMAN, Certified Court Reporter
25 15 Girard Avenue
West Long Branch, New Jersey 07764
732-229-5897

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1 A P P E A R A N C E S:

Page 1

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1 E X H I B I T S

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3 EXHIBIT NO.	DESCRIPTION	PAGE NO.
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4	Exhibits were not marked.	
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Holmdel township NJNG 12-16_1.txt

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MS. COSCIA: Mr. Scarano?
MR. SCARANO: Here.
MS. COSCIA: Mr. Orfanitopoulos?
MR. ORFANITOPOULOS: Here. Item Number

1, please?

MR. JAFFE: Continued public hearing,
New Jersey Natural Gas, 970 Holmdel Road, site
of Cornerstone Power Solar Farm, Preliminary
Site Plan Number 2015-2, Block 13, Lot 14 in the
OL2 zone. Applicant seeks variance relief to
construct a regulator station, a regulator
station, which is an additional principal use on

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the site. Variance relief to construct the
proposed regulator station within the buffer
required between a non-residential use and
residential zone where 384.25 feet is required
and 74.5 is proposed. Variance relief for fence
height in front, side and rear yard, 8 foot
proposed, 6 foot permitted.

MR. ORFANITOPOULOS: Thank you. Do you
want to do a recap where we are and where we are
left to do today?

MS. SKIDMORE: Absolutely. Good
evening, Board Members. Nancy Skidmore, Connell
Foley, on behalf of the Applicant, New Jersey
Natural Gas. The first hearing, on this matter,
was February 3rd, followed by an onsite
inspection on February 27th. The second hearing
was conducted on March 2nd, on May 18, July 20,

In order to conserve paper and preserve the environment,
pages 7 to 79 have been omitted.

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3 for each one of you to listen as best you can
4 for the next, I didn't time myself, but eight or
5 nine minutes, because what I have to say is
6 really important.

7 I am going to use some notes. I
8 typically don't do that, but I am a little weary
9 at this stage of the game and I want to make
10 sure I tell you everything that I think is
11 really important to this application. So, with
12 that, to start out, I, again, thank each and
13 every one of you for all of the time and effort
14 that each of you has put into running the
15 details of this application, the need and the
16 purpose of this regulator station, in Holmdel.
17 We've been here for 11 months, 308 days. I
18 didn't count hours, but quite a long time. Both
19 listening to the testimony of our experts and
20 professionals and comments and questions from
21 the public and comments and questions from the
22 Board so I appreciate that.

23 Since the commencement of this public
24 hearing, in February, you've heard testimony
25 from NJNG, clearly indicating the absolute need

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1 for this regulator station, at this site, in
2 order to ensure continued safe and reliable
3 natural gas service to Holmdel residents.
4 Providing safe and reliable NJNG mandates, as a
5 public utility, under Federal and State law.
6 But it is more to them.

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11 protect the facility from vehicles coming into
12 contact with it.

13 You've also heard testimony from NJNG
14 noise expert, Ed Potenta. Not only will the
15 station comply with both state and local noise
16 regulations, it also will have no impact upon
17 existing noise levels at the surrounding
18 properties with the installation of a sound
19 wall.

20 You've also heard testimony from NJNG
21 Director of Transmission Pressure Measurement,
22 Kraig Sanders, that this station will be very
23 secure and monitored on a 24/7 basis and that
24 it, like every other station at NJNG's system,
25 will be very safe.

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1 Finally, you've heard the testimony from
2 NJNG's expert planner, Peter Van den Kooy, and
3 in his testimony he states his station is an
4 inherently-beneficial use. He testified that
5 the application meets the proofs required for
6 the variances and waivers that we seek.

7 NJNG would like to remind the Board that
8 this use is indeed a permitted public utility
9 use in the OL-2 zone, where the property is
10 located. So there already has been a municipal
11 determination that this use, this public utility
12 use is both appropriate for the property and for
13 the zone, but because we require an additional
14 principal use on the site, we are here for a use

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Holmdel township NJNG 12-16_1.txt

19 primary purpose of ensuring that Holmdel
20 residents continue to receive safe and reliable
21 natural gas service to heat their homes. It's
22 difficult to imagine more of a compelling public
23 interest than safeguarding the reliable delivery
24 of heat and hot water to every resident, in
25 Holmdel, particularly during the coldest winter

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1 months.

2 The second and third steps require the
3 Board to identify a detrimental effect. And if,
4 in fact, there is a detriment present, the Board
5 may then be permitted to impose reasonable
6 conditions, if any. As to both of these steps,
7 you've heard repeated uncharted testimony, from
8 NJNG experts and professionals, that there will
9 be no detrimental impacts, and certainly,
10 substantially no detrimental impacts. Even if
11 some nominal impacts are as to noise and
12 aesthetics, NJNG will mitigate those impacts,
13 including the installation of a sound wall and
14 the addition of a berm, guardrail, retaining
15 wall to the already robust Landscape Plan, as
16 well as lowering the facility behind those
17 screened devices.

18 As NJNG has demonstrated, over the
19 course of the past 11 months, this station will
20 be concealed from public view, the neighboring
21 property owners will not be able to hear it.

22 There will be no odors, practically no traffic

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Holmdel township NJNG 12-16_1.txt

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1 regard, there is no evidence, in the record,
2 that demonstrates any substantial negative
3 impact that would exceed the public benefits
4 afforded to almost every single Holmdel resident
5 on this application. To put it more simply, the
6 number of Holmdel residents estimated the
7 benefit from the heat provided by this facility
8 are more than 16,500, many of which are the
9 elderly or small children, who are the most
10 susceptible to serious injuries, in the event
11 they are left without heat. Even if we are only
12 talking about one elderly person or one small
13 child, can any of you say, there is any evidence
14 of even one negative impact that would be with
15 the risk of putting that one elderly person or
16 that one small child in harm's way?

17 Now, multiply that risk by 16,500 people
18 and ask yourself that same question. Based upon
19 all of the undisputed expert and professional
20 testimony that you've heard, NJNG submits that
21 it has not just met, but has exceeded all of
22 these legal requirements to earn approval of
23 this application by the Board and we
24 respectfully request your approval of this
25 application this evening. Thank you very much,

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1 again, for all of your time and consideration.

2 MR. ORFANITOPOULOS: Thank you very

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7 Holmdel township NJNG 12-16_1.txt
I agree the project itself is
8 beneficial. The way you are approaching it, to
9 me, is not beneficial to the residents. You
10 know, if the question is, are you going to be
11 sued, if we say, no, you are probably going to
12 sue us. But if we say, yes, these people, down
13 at that end of Town, are paying a lot of taxes,
14 and their property value is going to go down,
15 and they will probably pull their funds and they
16 are going to sue us. The question is, who would
17 we rather be sued by? Who would I rather be
18 sued by, New Jersey Natural Gas? I don't want
19 the residents suing me, because I was not
20 cognizant of their considerations. Yes, both
21 sides have valid issues.

22 MR. DENOIA: If I can reel you in a
23 little bit, discussion is fine.

24 MR. ORFANITOPOULOS: That is not exactly
25 a discussion.

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1 MR. DENOIA: What you need to determine,
2 is there a positive benefit and does the
3 positive benefit substantially get outweighed by
4 the negative and the litigation or what happens,
5 whatever decision this Board makes, I don't
6 think is germane to this discussion.

7 MS. AVRIN-MARCIANO: Are you okay to
8 make a motion now and we can poll a vote?

9 MR. FRANK: Sure. Go ahead.

10 MS. AVRIN-MARCIANO: I am going to make

15 Holmdel township NJNG 12-16_1.txt
a yes vote, with a negative motion, you agree
16 with the denial. Why don't we start with your
17 motion and then I will explain after I hear your
18 motion.

19 MR. ORFANITOPOULOS: Let's explain.

20 MS. AVRIN-MARCIANO: I am going to make
21 a motion that we deny New Jersey Natural Gas for
22 constructing an additional principal use on the
23 site and deny variance relief to construct a
24 proposed regulator station within the buffer
25 required between a non-residential use and a

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1 residential zone and deny their variance relief
2 for fence height in the front, side and rear
3 yards.

4 MR. DENOIA: Okay. That is a motion.
5 Is there a second?

6 MR. SCARANO: Second.

7 MR. DENOIA: Motion made and a second.
8 Now, when you take this vote, I feel it is
9 appropriate and necessary that when you vote,
10 you explain your vote and you explain it in
11 terms of the legal parameters of why you feel
12 what you feel and that we get an explanation of
13 whether you feel the burdens have or have not
14 been met under the SICA case.

15 MR. ORFANITOPOULOS: Okay. Let's make
16 sure. If you vote, yes.

17 MR. DENOIA: If you vote yes, you agree
18 with the denial.

23 Holmdel township NJNG 12-16_1.txt
understand, maybe other people don't realize it,
24 but I do.

25 Again, I say that my vote is no, I do

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1 not agree.

2 MR. DENOIA: The only other thing I
3 would add, if you have a comment on whether you
4 feel that this use is inherently beneficial, we
5 should put that on the record. You should also
6 understand that you have a weighing process
7 where your conclusion, and you've given an
8 explanation, that any conclusion you feel is
9 not, hypothetically, aesthetic to the zone plan,
10 that you feel it is beneficial and that the
11 negatives don't substantially outweigh the
12 positives. If that is the conclusion you feel,
13 you should cite that on the record.

14 MR. AINELLO: Okay. Let me add to my
15 statement. I do feel there is an inherently
16 beneficial use. I think it will state the
17 greater good of Holmdel and the people that live
18 in Holmdel. I think any negative issues that
19 come along with this thing are outweighed by
20 those positive issues.

21 MR. FRANK: A yes vote denies the
22 application, correct?

23 MS. COSCIA: Yes.

24 MR. FRANK: In this case, I vote, yes,
25 for some of the reasons that I've already

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Holmdel township NJNG 12-16_1.txt

4 So, as I said, I understand the beneficial use
5 for the citizens, but I have issues with the
6 risk of it being as close as it is.

7 MR. ORFANITOPOULOS: Thank you.

8 MR. PESCE: I also vote yes. I think
9 Mr. Jaffe said it very well, because those are
10 my concerns, exactly. I understand that we need
11 to make every reasonable effort to accommodate
12 inherently beneficial use, however, for me, the
13 negatives far outweigh the positives here. I do
14 also feel that it is way too close to the
15 roadway. I think there is certainly safety
16 risks, and not to mention property values and I
17 just can't help but feeling if I lived close to
18 that property, my property values would be
19 affected, amongst other things.

20 MR. ORFANITOPOULOS: Thank you.

21 MR. SCARANO: I vote, yes. I know we
22 talk about inherently beneficial use, but I am
23 not certain that the residents of Holmdel or
24 those poor children are going to be denied hot
25 water, because we don't put a regulator station

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1 in. Because, based on the testimony, things
2 seem to be running perfectly fine at this
3 moment. So I don't see any inherently
4 beneficial use. I think the negatives outweigh
5 the positive. I think the negatives are based
6 on testimony from the professionals, from the
7 gas company themselves that there are, in fact,

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12 get by the safety issue, but it is so close to
13 the roadway and the site visit really magnified
14 how close it is to the roadway there. That
15 steel bar would not stop a truck coming through
16 there. It's directly in the middle of the
17 residential neighborhood there, so I just can
18 not agree that this is the proper place for
19 this.

20 I do agree that it is an inherently
21 beneficial use for Holmdel, as a gas utility and
22 a warming station, but I think having spent a
23 tremendous amount of time weighing the positive
24 and the negative criteria, the positive does not
25 overcome the negative. I would like to say,

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1 however, that you did an outstanding job. Your
2 client should be extremely pleased. I guess we
3 are not going to be pleased with the result, but
4 they should know that you are extremely
5 impressive in your job. I was very impressed
6 how you conducted and handled yourselves and
7 prepared your witnesses.

8 MS. SKIDMORE: Thank you. I appreciate
9 that.

10 MR. ORFANITOPOULOS: Oh, boy. I get to
11 be last. First, I want to thank the public.
12 Your behavior has been superb. We went through
13 a lot of meetings with a lot of uproar. I know
14 it's important, a lot of issues, and it's their
15 heart. I am, too, a resident of Holmdel and

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20 safety. I, too, feel that it was brought up by
21 Members of this Board and public why we couldn't
22 go back and I don't believe I remember hearing
23 any testimony from the solar farm refusing us to
24 go back onto their property further back. I
25 understood there was testimony about pipeline

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1 shouldn't go too far back, but I wasn't
2 convinced of that. If it was set back 200 to
3 300 feet from the road then I would feel -- then
4 it would be harder to deny this application.

5 I also feel that Kim brought up a point,
6 which was on my mind but I never addressed, that
7 she has her farm there. There are grapes
8 literally across the street. And, who knows
9 what the fumes and output could do to that
10 farmland. She is 100 percent right. This is a
11 historic area and I just don't see having that
12 station located in that location going to
13 benefit the whole of people in Holmdel.

14 As far as visual, as far as safety, and
15 what else, oh, also, I feel that New Jersey Gas
16 hasn't convinced me that it is necessary. We
17 have an existing system that's been working
18 fine. I have not heard -- I haven't felt that I
19 heard enough to tell me that system would fail
20 and cause the possible outage that was discussed
21 today and it's been working fine up to now and I
22 don't see why we need to do something in that
23 location.

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CERTIFICATE

I, LISA NORMAN, a Notary Public and
Certified Court Reporter of the State of New Jersey,
do hereby certify that prior to the commencement of
the examination, the witness was duly sworn by me to
testify the truth, the whole truth and nothing but
the truth.

I DO FURTHER CERTIFY that the foregoing
is a true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

Notary Public of the State of New Jersey
License No. 30X100177700
Dated: December 11, 2016

**WINDELS
MARX**

Windels
Marx
Lane &
Mittendorf, LLP

windelsmarx.com

Gregory Eisenstark
732.448.2537
geisenstark@windelsmarx.com

120 Albany Street Plaza, | New Brunswick, NJ 08901
T. 732.846.7600 | F. 732.846.8877

November 28, 2018

Via Overnight Delivery

Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Ste. 314
P.O. Box 350
Trenton, NJ 08625-0350

RECEIVED
MAIL ROOM
NOV 29 2018
BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Re: **In the Matter of the Petition of New Jersey Natural Gas Company for a
Determination Concerning the Holmdel Regulator Station Pursuant to
N.J.S.A. 40:55D-19
Docket No. GA18111251**

Dear Secretary Camacho-Welch:

Enclosed for filing please find an original and ten (10) copies of the Petition of New Jersey Natural Gas Company ("NJNG" or "Company") appealing a decision of the Holmdel Township Zoning Board of Adjustment denying the Company's application for the construction of a proposed regulator station (the "Regulator Station" or "Facility"). The Company respectfully requests, pursuant to N.J.S.A. 40:55D-19, that the Board determine that, as further described in the attached Petition, supporting testimonies and exhibits, the construction of the proposed Regulator Station, at 960 Holmdel Road in Holmdel Township ("Holmdel"), is for the benefit of the residents of Holmdel and neighboring municipalities located in Monmouth County; is necessary to maintain system integrity and reliability and is reasonably necessary for the service, convenience or welfare of the public; and that no alternative site or sites are reasonably available to achieve an equivalent public benefit. NJNG therefore requests that the Board issue an order concluding that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Municipal Land Use Law of the State of New Jersey shall not apply to the proposed Facility, and authorizing the Company to construct the Facility as set forth in the Petition and supporting testimony and exhibits.

Copies of the Petition, including the supporting testimonies and exhibits, are also being provided to Caroline Vachier, DAG and Stefanie Brand, Esq, Director, Division of Rate Counsel, Maureen Doloughty, Clerk of Holmdel Township, Loretta Coscia, Secretary, Holmdel Zoning Board of Adjustment, as well as to those individuals listed on the attached Service List.

ONE
Legal/Lupo
DAG
RPA
S. Peterson
ENERGY (4)

M. Storaack

NEW YORK, NY | NEW BRUNSWICK, NJ | MADISON, NJ | STAMFORD, CT

WINDELS
MARX

Windels
Marx
Lane &
Mittendorf, LLP

November 28, 2018

Page 2

Kindly acknowledge receipt of this filing by date stamping the enclosed copy of this letter and returning same in the self-addressed, stamped envelope. Thank you for your consideration in this regard.

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Petitioner
New Jersey Natural Gas Company

By: 

Gregory Eisenstark, Esq.

c: Attached Service List
Hon. Elia A. Pelios, ALJ

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE PETITION OF
NEW JERSEY NATURAL GAS COMPANY
FOR A DETERMINATION CONCERNING
THE HOLMDEL REGULATOR STATION
PURSUANT TO N.J.S.A. 40:55D-19**

**: PETITION
:
:
: DOCKET NO.
:
:**

RECEIVED
MAIL ROOM
NOV 29 2018
BOARD OF PUBLIC UTILITIES
TRENTON, NJ

**To: THE HONORABLE COMMISSIONERS OF
THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

Petitioner, New Jersey Natural Gas Company (“Petitioner,” “NJNG” or the “Company”), respectfully petitions the New Jersey Board of Public Utilities (the “Board” or “BPU”), pursuant to N.J.S.A. 40:55D-19, as follows:

1. NJNG appeals to the Board from a decision of the Holmdel Township Zoning Board of Adjustment (“Zoning Board”) denying the Company’s application for the construction of a proposed regulator station (the “Regulator Station” or “Facility”) at 960 Holmdel Road in Holmdel Township, New Jersey (“Holmdel”). The Company respectfully requests, pursuant to N.J.S.A. 40:55D-19 and N.J.S.A. 48:2-23, that the Board determine that the construction of the Facility for the benefit of the residents of Holmdel and neighboring municipalities in Monmouth County, as more fully described herein, is: (a) necessary to maintain system integrity and reliability; and (b) necessary for the service, convenience or welfare of the public, and that no alternative site or sites are reasonably available to achieve an equivalent public benefit. Accordingly, NJNG request that the Board issue an Order concluding that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Municipal Land Use Law of the State of New Jersey (the “MLUL”) shall not apply to the proposed Facility, and the Company may proceed with the

construction of the Facility as described in this Petition and accompanying testimony and exhibits.

I. BACKGROUND

2. NJNG is a corporation duly organized under the laws of the State of New Jersey, and is a public utility engaged in the transportation and distribution of natural gas, and thereby subject to the jurisdiction of the Board, with a principal business office located at 1415 Wyckoff Road, Wall, New Jersey 07719. As a local natural gas distribution company, NJNG provides regulated retail natural gas service to approximately 538,000 customers in Monmouth and Ocean counties, as well as portions of Burlington, Middlesex and Morris counties.

3. Communications and correspondence relating to this filing should be sent to:

Mark G. Kahrer
Vice President – Regulatory Affairs
New Jersey Natural Gas Company
1415 Wyckoff Road
Wall, New Jersey 07719
(732) 938-1214
mkahrer@NJNG.com

Andrew K. Dembia, Esq.
Regulatory Affairs Counsel
New Jersey Natural Gas Company
1415 Wyckoff Road
Wall, New Jersey 07719
732-938-1073
adembia@NJNG.com

Gregory Eisenstark, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, New Jersey 08901
732-448-2537
geisenstark@windelsmarx.com

4. This Petition is accompanied by the proposed Facility information and the following Exhibits, which are attached hereto and made part of this Petition:

- Exh. P-1 – Direct Testimony of Kraig Sanders (Need and System Reliability)
- Exh. P-2 – Direct Testimony of Marc Panaccione (Construction and Design, Site location and Alternatives)
- Exh. P-3 – Map of Holmdel identifying location of transmission line as well as Zoning & environmental restrictions
- Exh. P-4 – Overall Plan and Site Plan & Grading Plan
- Exh. P-5 – Site Plan with Landscaping
- Exh. P-6 – Truncated Transcript of Holmdel Zoning Board of Adjustment – Final Vote (October 25, 2018)

5. NJNG is serving notice and a copy of this filing, together with a copy of the annexed Exhibits being filed herewith, upon those individuals identified in the attached service list, including the Director, Division of Rate Counsel, the Director, Division of Law – Office of the Attorney General, and the Clerk of Holmdel Township.

6. As a natural gas “public utility” as that term is defined in N.J.S.A. 48:2-13, NJNG is subject to regulation by the Board for the purpose of assuring that it provides safe, adequate and proper natural gas service to its customers pursuant to N.J.S.A. 48:2-23. As a result, the Company is obligated to, and does, maintain its public utility infrastructure in such condition as to enable it to meet its regulatory obligations to provide the requisite service. That infrastructure consists of the property, plant, facilities and equipment within NJNG’s natural gas distribution and transmission system throughout its service territory.

7. NJNG is committed to providing safe, adequate and proper service in accordance with N.J.S.A. 48:2-23. Consistent with industry practice and its ordinary capital spending planning cycle, NJNG engages continuously in the construction, operation and maintenance of its public utility infrastructure, including the property, plant, facilities and equipment that comprise the natural gas distribution and transmission system utilized to serve the approximately 538,000 customers throughout the NJNG service territory. This effort includes the replacement, reinforcement and expansion of the Company's infrastructure, (*i.e.*, its property, plant, facilities and equipment) to maintain the reliability of its distribution and transmission system and to ensure the continuation of safe, adequate and proper service.

8. In furtherance of its commitment to maintain the reliability and safety of its transmission and distribution system, NJNG seeks with this Petition Board authorization pursuant to N.J.S.A. 40:55D-19, and thus requests that the Board determine that the construction and installation of the proposed Facility is necessary for the service, convenience or welfare of the public, and that no alternative site or sites are reasonably available to achieve an equivalent public benefit. As demonstrated below, and in the accompanying testimony and exhibits, the Facility is required in order to maintain the integrity and reliability of NJNG's local distribution system because it will allow the Company to reliably and safely achieve the significant reduction in gas pressure (a change of more than 600 pounds per square inch gauge ("psig")) from the transmission system in Holmdel to the distribution system that ultimately delivers gas to customers in Holmdel and surrounding municipalities. The design of the Regulator Station -- particularly, an accompanying above-ground heating unit -- will prevent the regulators and associated facilities at the Regulator Station from freezing and becoming encased in thick ice, a condition that can result in a loss of service to the local distribution system. Additionally, the

icing situation can spread to the underground piping, ultimately compromising the integrity of the surrounding roadways.

II. HOLMDEL REGULATOR STATION FACILITY DESCRIPTION

9. The Regulator Station is a natural gas pressure reduction facility that will consist of a filter, heater, two regulator runs and associated piping. The Regulator Station will have dual regulator runs to better ensure the reliability, safety and adequacy of gas delivery to NJNG's customers. The redundancy of regulator runs is an industry best practice employed to manage risk; if one run is deactivated for maintenance or fails due to an equipment malfunction, the second run will continue operating in order to seamlessly maintain system pressure and delivery of natural gas, thereby avoiding any service interruption. The Facility will be constructed in full accordance with N.J.A.C. 14:7 and the Federal Regulations for the Transportation of Natural and Other Gas by Pipeline, Part 192, Title 49 of the Code of Federal Regulations.

10. The Facility will be located within easements on private property. Specifically, it will occupy six easement areas on a parcel of land located on Block 13, Lot 13 in Holmdel (the "Proposed Site"). The street address for the Proposed Site is 960 Holmdel Road, Holmdel, New Jersey. The lot is 16.51 acres and is occupied by an office park complex and an existing cellular communications tower. The Regulator Station will be situated on a small section of the property approximately 180 feet west of the Holmdel Road right-of-way, on six specific easements: a 40' x 150' Site Facility Easement, a 10' x 160' Pipe Easement, an 18' x 50' Access Easement, two "L"-shaped 20' wide berm and Landscape Easements (East and West), and an 18' x 95' tree line easement. The location and design of the Facility are more fully described in Exhibits P-1, P-2, P-3, P-4 and P-5 attached hereto.

III. NEED FOR THE HOLMDEL REGULATOR STATION FACILITY

11. As more fully described in the accompanying testimony of Kraig Sanders (Exhibit P-1), the operational need for the Regulator Station arises from NJNG's 2012 upgrade of its transmission line in Holmdel. Specifically, in 2012, as part of its efforts to continually upgrade and modernize its system, NJNG replaced the existing transmission line located in Holmdel due to its age and to comply with federal pipeline integrity requirements. The upgraded transmission line has a maximum allowable operating pressure ("MAOP") of 722 psig.

12. The newly upgraded transmission system provides natural gas to NJNG's local distribution system, which operates at approximately 100 psig. The Regulator Station is needed to adequately, safely and reliably accomplish the more than 600 psig reduction in gas pressure between the transmission system and the distribution system, so that pressure is reduced for the safe and efficient delivery of gas to NJNG's local customers.

13. Critically, the Regulator Station will be equipped with an aboveground, natural gas-fueled heating unit designed to pre-heat the natural gas traveling through the regulators connecting the transmission system to the distribution system. This heating unit is an essential component of the Regulator Station because of the 600 psig pressure reduction that will take place between the transmission system and the distribution system. Specifically, due to the thermodynamic principle known as the Joule-Thomson Effect, that significant pressure reduction will result in an approximately 40 degree Fahrenheit decrease in the temperature of the natural gas flowing through the regulators. (For every 14.7 psig reduction, the temperature of natural gas drops one degree Fahrenheit.)

14. Such a temperature change will result in gas temperatures well below freezing, especially during the winter months, because gas within a pipeline typically travels at the

temperature of the surrounding ground. For example, in winter—when the average ground temperature in New Jersey is slightly below 40 degrees Fahrenheit, and possibly colder—gas will flow into the Regulator Station at that temperature, and as a result of the 600 psig reduction, will drop to 0 degrees Fahrenheit or lower (absent a heater).

15. Without a heating unit, that drastic temperature reduction will cause significant amounts of ice to form on the regulators and other instrumentation that control the flow and pressure of natural gas in NJNG's system. Such ice casing can easily reach a thickness of more than twelve inches, and possibly even twenty-four inches. This icing effect occurs not just in the winter months, but rather throughout the year; because the average ground temperature in the summer is approximately 55 degrees Fahrenheit, a forty degree temperature drop would still result in sub-freezing gas temperatures and icing around the regulator equipment, even during those warmer months. Such significant ice encasing can cause the regulator equipment to malfunction or to cease operating entirely, which can cause damage to the equipment and result in loss of service to some or all of the many NJNG customers serviced by the subject regulator station. In extreme cases, ground moisture around the downstream underground piping can freeze, causing upheaval of the surrounding area or roadway.

16. The loss of gas service to a segment of Holmdel could prove devastating to the affected customers, especially in the winter when heat and hot water are critical. If, for example, a regulator failure resulted in the loss of service to dozens or even a hundred homes, there would be a significant delay in service restoration. That is because once gas service is interrupted, NJNG cannot simply flip a switch to instantaneously turn service back on after the regulator is thawed and repaired (a process that itself would take some time). Rather, before service could be restored, NJNG personnel would have to visit each of the affected premises to manually turn off

the gas and lock the meter at each residential and commercial service line. Once NJNG accomplished that task, it could re-pressurize the gas mains, but would have to return again to each individual affected property in order to turn the gas back on manually and re-light the pilot for each gas appliance and furnace. If NJNG did otherwise—if it simply turned the gas back on *en masse* without visiting each property—each premises with unlit pilot lights would slowly fill up with gas, which could result in a dangerous, potentially, life-threatening condition. If 50 or 100 houses lost service due to a regulator station failure, the restoration process could leave homes without heat for days, which in the winter months could lead to significant damage to homes (through freezing pipes, etc.) and/or the health and well-being of residents.

17. As is customary in the industry, NJNG will address the pressure-reduction icing effect at the Regulator Station—as it does at approximately 35 other similar stations—by pre-heating the transmission-line natural gas with a heater located at the Regulator Station prior to the pressure reduction. The heater will allow NJNG to heat the natural gas to approximately 80 to 90 degrees Fahrenheit, so the gas temperature after the pressure reduction stays above freezing, preventing ice from encasing the equipment and ensuring reliable operation of the Facility and the local distribution system. For that reason, the heating unit is an extremely important component of the Regulator Station and is critical to NJNG's ability to provide safe, adequate and reliable natural gas service to the residents of Holmdel and the surrounding municipalities.

18. Since the 2012 Holmdel transmission line upgrade, NJNG has been managing the transmission to distribution pressure reduction using a temporary regulator station at a different nearby location. That temporary station, however, is not a long-term solution and must be replaced because it does not and cannot include a heating unit (because of its size and location).

Because the temporary regulator station does not have a heater, it experiences incidents of severe icing, and thus requires close monitoring and frequent thawing, and presents a higher risk of service interruption. In addition, the Company has to operate this portion of its system at sub-optimal gas pressures and flows, due to the absence of a permanent regulator station in this area of Holmdel.

IV. SITE SELECTION AND ALTERNATIVE SITE ANALYSIS

19. Over the course of several years beginning in 2011, NJNG engaged in a laborious and detailed site selection and alternative site analysis (the “Site Analysis”) in an effort to find the most suitable location for the Facility that would have a minimal impact on Holmdel and its residents. As more fully described in the accompanying testimony of Marc Panaccione (Exhibit P-2), that analysis led NJNG to conclude that (a) the Proposed Site is the most suitable location for the Facility; and (b) aside from the Original Proposed Site (as identified herein below), no alternative site is reasonably available to achieve an equivalent public benefit.

20. As an initial matter, several siting constraints guided and informed the Site Analysis, and ultimately limited the available site options. First, for the reasons set forth in Marc Panaccione’s testimony (Exhibit P-2), it was extremely important from an operational and engineering standpoint to locate the Regulator Station as close as possible to the southern end of the Holmdel transmission line (where the line begins at the intersection of Newman Springs Road and Holmdel Road). Second, the site had to be large enough to accommodate all of the Facility’s related equipment (most notably, the heating unit). Third, the Regulator Station should be located in close proximity to the transmission line for efficiency and security reasons. Fourth, there are several types of properties that NJNG either avoids or cannot use for its gas delivery facilities. Most significantly, NJNG makes every effort to avoid residential areas, and instead

focuses on properties with commercial, industrial or utility zoning. The Company likewise avoids wetlands and low lying areas because they present a heightened risk of flooding and, more importantly, freezing during the winter months. Further, NJNG looks for sites with no environmental or contamination issues, and prefers sites with little or no required tree clearing to further minimize any environmental impact. And, again to minimize any environmental impact, NJNG prefers to build its facilities on already developed land, as it typically only requires a relatively small parcel. Also, NJNG is prohibited from locating its facilities on Farmland Preserved properties under any circumstance, and on properties purchased with Green Acres funding without first getting difficult to obtain authorization from the State.

21. With those restrictions in mind, NJNG's Site Analysis focused on determining the most operationally suitable location that would enable NJNG to improve and reinforce existing service reliability with minimal impact to the surrounding properties. To that end, NJNG's site review and analysis considered potential impacts of each possible site from several perspectives: (1) impacts to residential areas; (2) existing environmental conditions; and (3) engineering considerations. Potential properties located in residential neighborhoods and/or close to other community-valued buildings (*e.g.*, schools) were disqualified from consideration, because the Facility would not typically be permitted on those properties due to local community discontentment and restrictions under Holmdel zoning ordinances. Existing environmental conditions—*e.g.*, tree clearing, wetlands, contaminated sites, Preserved Farmland and Green Acres habitats—were also relevant factors; NJNG avoided potential sites that had one or more of those environmental conditions. Finally, NJNG's engineering considerations included the importance of a location at the southern end of the transmission line; minimization of the

Facility's distance to the transmission line; adequacy of the property's size; sufficient access for inspection, maintenance and repair; property elevation levels; and security.

22. As part of its Site Analysis, NJNG examined the entire transmission line corridor between Route 35 (at the northern end) and Newman Springs Road (at the southern end) for potential locations, even though it is important to locate the Regulator Station as far south along the line as possible. That examination is set forth at length in Marc Panaccione's testimony (Exhibit P-2). As Mr. Panaccione's testimony makes clear, NJNG's in-depth analysis of every property along the Holmdel transmission line corridor yielded very few possibly suitable locations for the Regulator Station. In fact, in addition to the Proposed Site, NJNG initially identified just four possible alternatives (and even three of those sites were far less than ideal, given their northern locations and/or residential zoning). Later, during the hearings before the Zoning Board for the Original Proposed Site (as defined herein below), NJNG became aware of an additional alternative (the Proposed Site that is the subject of this filing with the BPU).

23. As Marc Panaccione details in his testimony, only two of the five alternative sites proved to be viable, for various reasons. The first two alternatives on South Laurel Avenue (near a property occupied by AT&T) proved unworkable because the landowner, Steiner Equities, refused NJNG's easement requests. In any event, those properties were far less suitable than the Proposed Site, given their location at the northern end of the transmission line corridor and their residential zoning. Moreover, an appraisal revealed that the third possible alternative—property on Holland Road owned by Monmouth County—was unusable because it was purchased with Green Acres funding. That property is also farther north than is operationally optimal. Most significantly, NJNG was unable to utilize the fourth alternative site because the tenant on that property, Vonage, refused to grant NJNG an easement after extensive, time-consuming

negotiations, thereby taking that property off the table as a viable alternative. As a result, NJNG was left with only two possible locations for the Regulator Station: a property located at 970 Holmdel Road, on which the Cornerstone solar farm is already located (the “Original Proposed Site”); and later, as discussed in more detail herein below, the Proposed Site at 960 Holmdel Road.

24. After the Company’s initial Site Analysis, the Original Proposed Site was identified as the most suitable location for the Regulator Station. The Original Proposed Site is of sufficient size, presents a natural fit to co-locate NJNG’s station with another energy company’s facility (the Cornerstone solar farm), and allows NJNG to locate the Facility adjacent to the transmission line. Significantly, the site is located at the southern end of NJNG’s Holmdel transmission line, which will minimize the risk of customer exposure to outages. Moreover, the zoning for the site is non-residential and conditionally permits public utilities. There are no environmental constraints that would impact the development of a regulator station at this site. The site is not encumbered with Green Acres restrictions. There are no low elevations in the easement area, and thus no flooding concerns, and NJNG is not required to clear a significant number of trees. Moreover, NJNG successfully obtained an easement from the relevant parties.

25. As discussed in greater detail below (in the section of this Petition captioned “Jurisdiction and Regulatory Standard for Approval”), on March 17, 2015, NJNG filed for several local zoning approvals for the Original Proposed Site with the Zoning Board, including Site Plan Approval, “C” and “D” variances, and Conditional Use approval. During the August 17, 2016 hearing on the Company’s application, a member of the Zoning Board asked NJNG whether the Company had considered the site at 960 Holmdel Road for the installation of the Regulator Station (Zoning Board Transcript 8/17/16, pg. 70, lines 18-25; pg. 71, lines 1-25; pg.

72, lines 1-18). Accordingly, after the Zoning Board denied NJNG's application for the Original Proposed Site, the Company evaluated the site at 960 Holmdel Road.

26. Based on that evaluation, the Company determined that the site at 960 Holmdel Road was suitable for the installation of the Regulator Station. Because the Proposed site is on the lot next to the Original Proposed Site at 970 Holmdel Road, it shares many of the same characteristics that make it suitable for the Facility. It is of sufficient size and allows NJNG to locate the Facility adjacent to the transmission line. Significantly, the site is located at the southern end of NJNG's Holmdel transmission line, which will minimize the risk of customer exposure to outages. Moreover, the zoning for the site is non-residential and conditionally permits public utilities. There are no environmental constraints that would impact the development of a regulator station at this site. The site is not encumbered with Green Acres restrictions. There are no prohibitively low elevations in the easement area, and thus no flooding concerns, and NJNG is not required to clear a significant number of trees. Furthermore, the Proposed Site slopes down by approximately 12 feet from the Holmdel Road right of way to the Facility, which affords an existing visual barrier even ignoring the extensive landscaping proposal presented by NJNG, which includes two "L"-shaped 20' wide berms and Landscape Easements directly around the facility enclosure, as well as an 18' x 95' tree line easement for a pre-emptive stand of evergreens to be planted approximately 60' from the Holmdel Road right of way. In addition, NJNG has successfully obtained easements from the relevant parties to use the Proposed Site for a Regulator Station. Finally, the Facility would be located approximately 180 feet west of the Holmdel Road right-of-way, which is a greater distance from the road than the Original Proposed Site (in which the Facility was proposed to be approximately 20 feet west of the Holmdel Road right-of-way), and approximately 260 feet west of the closest residential

property line across Holmdel Road, which is a greater distance from the closest residential property line than the Original Proposed Site (in which the Facility was proposed to be approximately 100 feet west of the closest residential property line). While NJNG considers the distance of the Original Proposed Site from the roadway to be more than adequate, the location of the Proposed Site was moved farther back due to concerns raised by the public and the Zoning Board.

27. In sum, based on the Site Analysis (as summarized above and detailed in the testimony of Marc Panaccione (Exhibit P-2)), the location best suited for the Facility is the Proposed Site. That location results in the least combined impacts to residential areas and the environment, while offering a feasible, and indeed preferable, engineering design. Moreover, NJNG's alternative site analysis establishes that there are no reasonably available alternative sites for the Regulator Station that will achieve an equivalent public benefit.¹

V. JURISDICTION AND REGULATORY STANDARD FOR APPROVAL

28. Holmdel's land use ordinances and regulations permit, under certain circumstances, the installation and operation of public utility facilities, public service infrastructure, public purpose uses and public improvements. In some instances, as is the case with the Facility, site plan review is required—or may be waived—by the local zoning authorities. In other words, the Facility generally and/or certain elements of it are subject to and require local zoning site plan approval. The Municipal Land Use ordinances, Site Plan Review ordinances and other ordinances and regulations applicable to and affecting the Proposed Site, on which the Regulator Station will be constructed and operated, have been enacted pursuant to the authority of the MLUL, N.J.S.A. 40:55D-1 et seq.

¹ For the reasons discussed elsewhere in this Petition and supporting pre-filed testimony, the Original Proposed Site remains a viable location for the Facility as well.

29. On March 17, 2015, NJNG filed an application with the Zoning Board, requesting Site Plan Approval, "C" and "D" variances, and Conditional Use approval for the Original Proposed Site. Specifically, NJNG sought variances (a) to construct the Regulator Station as an additional principal use on the Original Proposed Site; (b) to construct the Regulator Station within the buffer required between a non-residential use and residential zone (a 384.25 foot buffer is required, but NJNG proposes a buffer of 89.78 feet); and (c) to install an eight-foot high fence with wooden slats in the front, side and rear yard of the Facility (only eight-foot high open wire fencing is permitted). NJNG also requested (a) relief from two conditions of the Zoning Board's prior resolution approving the Cornerstone solar farm; (b) variances for NJNG's proposed sign and driveway access width (to the extent the Zoning Board deemed such variances necessary); and (c) several design waivers.

30. Importantly, the Original Proposed Site is located in the OL-2 zone. As a result, the proposed Facility is a conditionally permitted public utility use under Holmdel's municipal zoning ordinances. The Company demonstrated before the Zoning Board that this public utility use is both appropriate for the property and for the OL-2 zone. As set forth in its application and as demonstrated at the numerous Zoning Board hearings, the Facility is an inherently beneficial use. NJNG further demonstrated before the Zoning Board the suitability of the Original Proposed Site and that there are no reasonable alternative sites available, even though it had no obligation to do so (because the Facility is an inherently beneficial use).

31. The first Holmdel Zoning Board hearing on NJNG's application took place on February 3, 2016, followed by an onsite inspection of the Original Proposed Site on February 27, 2016. Six subsequent hearings were conducted on March 2, May 18, July 20, August 17, September 21 and December 7, 2016. During those seven hearings, the Company presented

voluminous testimony from six witnesses (nearly all of whom testified and/or answered Board and public questions on multiple occasions). Two witnesses—Mr. Kraig Sanders and Mr. Marc Panaccione—are NJNG employees directly involved in the design, construction and operation of the proposed Facility and/or the Site Analysis. The four other witnesses were independent outside experts in the fields of engineering, landscape architecture, noise impacts and planning.

32. NJNG made significant adjustments to its original site plan based on comments and concerns raised by the Zoning Board and members of the public during the numerous hearings. For example, based on concerns raised during the Zoning Board hearings regarding the possibility of vehicular collision with the Facility (an extremely unlikely event), NJNG proposed to (i) install bollards and a New Jersey Department of Transportation-compliant guardrail; (ii) expand an earthen berm with a retaining wall to surround the front and two sides of the property, which would significantly increase the height of the proposed landscaping; and (iii) lower the ground level of the Facility in order to reduce, if not completely remove, any visual impacts to the surrounding homeowners.

33. After ten months of extensive hearings at which NJNG's counsel and witnesses labored to answer every question and concern raised by the Board and the public, the Zoning Board denied NJNG's application on December 7, 2016. Surprisingly, six of the seven voting Board members acknowledged that NJNG had established that the Facility is an inherently beneficial use, yet the Board nonetheless voted to deny the Company's application (by a vote of six to one). (Exhibit P-5.)

34. Thereafter, on January 11, 2017, NJNG filed a Petition with the BPU pursuant to N.J.S.A. 40:55D-19, appealing the Zoning Board's decision and seeking Board approval

authorizing the construction of the Facility at the Original Proposed Site. The BPU subsequently assigned Docket Number GO17010023 to the matter.

35. On January 23, 2017, the BPU transmitted that filing to the Office of Administrative Law (“OAL”), where it was subsequently assigned to Administrative Law Judge Elia A. Pelios, and assigned OAL Docket No. PUC 1160-2017N. Judge Pelios issued an order allowing Holmdel Township to intervene in the matter, and the Division of Rate Counsel served discovery requests on NJNG, which the Company responded to. However, while that matter was pending, NJNG continued to evaluate the site at 960 Holmdel Road. Once it became apparent that the 960 Holmdel Road property (*i.e.*, the Proposed Site) was also suitable for the Facility, NJNG requested, and the parties agreed, that the matter pending before Judge Pelios be placed on the “inactive status” list while NJNG undertook efforts to secure the necessary approvals for the Proposed Site. The matter in OAL Docket No. PUC 1160-2017N remains on inactive status at the OAL.

36. On January 2, 2018, NJNG filed an application with the Zoning Board seeking preliminary and final site plan approval, “D” and “C” variances, and for Public Utility Conditional Use Approval for the Proposed Site. Specifically, NJNG sought variances (a) to construct the Regulator Station as an additional principal use on the Proposed Site; and (b) to install a twelve-foot high fence with wooden slats in a portion of the front and side yards of the Facility, an eight-foot high fence around other portions of the Facility, along with an eight-foot high solid sound wall (also partially in the front and side yards), where only eight-foot high open wire fencing is permitted); and (c) to install a 16” x 22” metal facility identification sign to the proposed fence, where signs are permitted to be attached to a building. In addition, to the extent deemed necessary by the Zoning Board, NJNG sought variances from building setback

requirements (where only structures, but not buildings are proposed) to (a) a property line (37.5' proposed from equipment, whereas 200' is required from a building), (b) a public street (186.4' proposed from equipment, whereas 400' is required from a building), and (c) a residential zone (266.4' proposed from equipment, whereas 600' is required from a building). Also to the extent deemed necessary by the Zoning Board, NJNG sought variances from (a) the 5% maximum building coverage requirement, where no buildings are proposed but equipment pads are proposed, totaling a *de minimis* 328 square feet, (b) the 20% maximum lot coverage requirement, where no buildings or paved surfaces are proposed but a *de minimis* 328 square feet of equipment pads are proposed, and (c) the minimum lot area requirement of 30 acres, where the existing site is 16.51 acres but a variance was previously granted for the site from this condition. Two design waivers were also requested by NJNG.

37. Importantly, the Proposed Site is also located in the OL-2 zone. As a result, the proposed Facility is a conditionally permitted public utility use under Holmdel's municipal zoning ordinances. The Company demonstrated before the Zoning Board that this public utility use is both appropriate for the property and for the OL-2 zone. As set forth in its application and as demonstrated at the Zoning Board hearings, the Facility meets the conditions required for the public utility conditional use and it is an inherently beneficial use. NJNG further demonstrated before the Zoning Board the suitability of the Proposed Site, even though it had no obligation to do so (because the Facility is an inherently beneficial use).

38. The first Holmdel Zoning Board hearing on NJNG's application took place on September 12, 2018. Three subsequent hearings were conducted on September 26, October 10, and October 25, 2018. During those four hearings, the Company presented comprehensive testimony from seven witnesses (nearly all of whom testified and/or answered Board and public

questions on multiple occasions). One witness — Mr. Kraig Sanders — is a NJNG employee directly involved in the determination of the need for the proposed Facility. The six other witnesses were independent outside experts in the fields of engineering, landscape architecture, sound and air quality, real estate appraisal, economic benefits, and planning.

39. After extensive hearings at which NJNG's counsel and witnesses labored to answer every question and concern raised by the Board and the public, the Zoning Board denied NJNG's application on October 25, 2018.² (Exhibit P-5.)

40. As a result, pursuant to N.J.S.A. 40:55D-19, the Company appeals the Zoning Board's decision, thereby seeking Board approval of the proposed Facility and an order that the zoning, site plan review and all other Municipal Land Use Ordinances and Regulations promulgated under the auspices of the MLUL shall not apply to the Regulator Station.

41. N.J.S.A. 40:55D-19 provides in pertinent part as follows:

If a public utility, as defined in [N.J.S.A.] 48:2-13 . . . is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility or electric power generator has an interest, an appeal to the Board of Public Utilities of the State of New Jersey may be taken within 35 days after such action without appeal to the municipal governing body pursuant to section 8 of this act unless such public utility or electric power generator so chooses. . . . A hearing on the appeal of a public utility to the Board of Public Utilities shall be had on notice to the agency from which the appeal is taken and to all parties primarily concerned, all of whom shall be afforded an opportunity to be heard. *If, after such hearing, the Board of Public Utilities shall find that the present or proposed use by the public utility or electric power generator of the land described in the petition is necessary for the service, convenience or welfare of the public*, including, but not limited to, in the case of an electric power generator, a finding by the board that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and *that no alternative site or sites are reasonably available to achieve an equivalent public benefit*, the public utility or electric power generator may proceed in accordance with such decision of the Board of Public Utilities, any ordinance or regulation made under the authority of this act notwithstanding.

² As of the date of this filing, the Zoning Board has not yet issued a written Resolution memorializing its oral decision.

42. The Appellate Division first interpreted the “necessary for the service, convenience of welfare of the public” standard (as set forth in a predecessor statute) in In re Hackensack Water Co., 41 N.J. Super. 408 (App. Div. 1956). In Hackensack Water, the Appellate Division concluded that the legislative intent was to empower the BPU to approve projects that are in the public interest, even when those projects conflict with local interests as “expressed through prohibiting provisions of a municipal zoning ordinance.” Id. at 419-20. The Appellate Division explained that while municipal ordinances are important to the public welfare, “such regulation is basically from the local aspect for a local public purpose,” and “the legislative intent is clear that such local regulation, however beneficent and important, is of secondary importance to the broader public interest involved in assuring adequate [] service to a much larger area.” Id. at 423.

43. In Petition of Monmouth Consol. Water Co., 47 N.J. 251 (1966, the New Jersey Supreme Court summarized the policies underlying the standard set forth in N.J.S.A. 40:55D-19 (again in the context of the predecessor statute) as follows:

In enacting this section the Legislature recognized that local municipal authorities are ill-equipped to comprehend adequately the needs of the actual and potential users of the utility’s services beyond as well as within their territorial limits. The lawmakers knew that if the zoning power of a municipality were paramount, it would probably be exercised with an eye toward the local situation and without consideration for the best interests of the consumers at large in other communities whose convenience and necessity require service. The exemption [from local zoning regulation] also signifies an awareness that if the local authorities were supreme the Board of Public Utility Commissioners could not compel a utility to provide adequate service if the zoning ordinance conflicted with the need for expansion or extension of its facilities within the municipality.

Id. at 258.

44. Soon after Hackensack Water, the New Jersey Supreme Court, in In re Public Service Electric & Gas Co., 35 N.J. 358 (1961) (“PSE&G”), announced a series of guiding

principles for application of the standard set forth in N.J.S.A. 40:55D-19.³ First, the Supreme Court held that “[t]he statutory phrase, ‘for the service, convenience and welfare of the public’ refers *to the whole ‘public’ served by the utility* and not the limited local group benefited by the zoning ordinance.” PSE&G, 35 N.J. at 376-77 (emphasis added). Second, the Court held that “[t]he utility must show that the proposed use is reasonably, not absolutely or indispensably, necessary for public service, convenience and welfare at some location.” Id. at 377. Third, “[i]t is the ‘situation,’ *i.e.*, the particular site or location . . . which must be found ‘reasonably necessary,’ so the Board must consider the community zone plan and zoning ordinance, as well as the physical characteristics of the plot involved and the surrounding neighborhood, and the effect of the proposed use thereon.” Id. Fourth, “[a]lternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity.” Id. Fifth, “[t]he Board’s obligation is to weigh all interests and factors in the light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom,” and, “[i]f the balance is equal, the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local considerations.” Id.

45. In sum, to obtain an order from the Board exempting a project from local zoning ordinances and regulations, a public utility must demonstrate two things. First, the public utility must demonstrate that the proposed project is reasonably—but not absolutely or indispensably—necessary for the service, convenience or welfare of the entire public served by the public utility, taking into account the affected municipalities’ zone plans and zoning ordinances and the physical characteristics of the affected land and surrounding neighborhood (and the effect of the

³ The Appellate Division has held that while Hackensack Water and PSE&G analyzed a predecessor statute, the holdings and principles announced in those cases are applicable to N.J.S.A. 40:55D-19, which contains the same standards. In re Public Serv. Elec., 2013 N.J. Super. Unpub. LEXIS 304 at *25-26.

proposed use on that land and neighborhood). Second, the public utility must demonstrate that the site, method or route chosen for the proposed project is the best available, and thus its use is reasonably necessary, based on consideration of alternative sites, methods and routes and their comparative advantages and disadvantages to all interests involved, including costs.

46. Here, NJNG has presented overwhelming evidence in this Petition satisfying both of these requirements.

VI. REASONABLE NECESSITY AND BEST AVAILABLE SITE

47. As demonstrated above and in the accompanying testimonies (particularly that of Kraig Sanders), the Facility is required in order to maintain the integrity and reliability of NJNG's local distribution system because it will allow the Company to reliably, efficiently and safely achieve the 600 psig reduction in gas pressure between the upgraded transmission system in Holmdel and the local distribution system, which serves customers in Holmdel and surrounding municipalities. The design of the Regulator Station—most importantly, the above-ground heating unit—will prevent the regulators and associated equipment at the Facility from becoming encased in thick ice, which could well result in a harmful loss of service to the customers served by the local distribution system. The present configuration of NJNG's delivery apparatus does not adequately accomplish this goal because, inter alia, the temporary regulator being used as a stop gap does not employ and cannot accommodate a heater. As a result, NJNG has demonstrated that the proposed Facility is necessary for the service, convenience or welfare of the entire public served by the public utility.

48. Moreover, NJNG has presented significant evidence establishing that there are no reasonably available alternatives that could achieve an equivalent public benefit. As detailed above and in the evidence submitted in this filing (particularly, the testimony of Marc

Panaccione), NJNG conducted a comprehensive Site Analysis of every property along the Holmdel transmission line corridor. That search yielded just five alternative properties, in addition to the Proposed Site, that could even arguably have served as the location for the Regulator Station (though several of them were less than ideal). For various reasons, none of those properties ultimately proved to be a viable option. Moreover, the Zoning Board has previously denied the Company's application for the Original Proposed Site.

49. In any event, NJNG's Site Analysis made clear that the Proposed Site is the most appropriate available location for the Regulator Station because it (a) is located at the southern end of NJNG's Holmdel transmission line; (b) is of sufficient size; (c) is adjacent to the transmission line; (d) is in a non-residential zone that conditionally permits public utilities; (e) presents no environmental constraints; (f) has no Green Acres or Farmland Preservation restrictions; (g) has no prohibitively low elevation, wetlands or flooding issues; (h) requires insignificant tree clearing (only one tree to be removed); and (i) already contains another utility-like facility – a cellular communications tower. Moreover, at the suggestion of a Zoning Board member during the hearings for the Original Proposed Site, NJNG was able to obtain an easement to construct and operate the Facility on the Proposed Site.⁴ In short, the record evidence demonstrates beyond dispute that the Proposed Site is the best available location for the Regulator Facility, and thus its use is reasonably necessary, based on consideration of alternative sites, and their comparative advantages and disadvantages to all interests involved, including costs.

⁴ The Zoning Board's 2018 denial was particularly arbitrary, given that the majority of the Zoning Board had previously determined that the Regulator Facility was an inherently beneficial use, and after a member of the Zoning Board suggested that NJNG consider using the 960 Holmdel Road site instead of the Original Proposed Site.

50. As a result, the Board should approve the construction and operation of the Regulator Station; determine that the construction and operation of the Regulator Station is necessary to maintain system integrity and reliability and necessary for the service, convenience or welfare of the public, and that no alternative site or sites are reasonably available to achieve an equivalent public benefit; and issue an order that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the MLUL shall not apply to the Regulator Station.

VII. OTHER APPROVALS

51. The Company has applied for and obtained a Freehold Soil Erosion & Sediment Control Permit, an approval from the Monmouth County Planning Board, and a Letter of Interpretation for a Footprint Disturbance Determination and the approved Wetland Permitting Plan from the New Jersey Department of Environmental Protection.

52. A New Jersey Department of Environmental Protection (“DEP”) Air Permit is not required due to the insignificant source of emissions. Also, a DEP Land Use Permit is not required due to the limited scope of the Facility and the absence of environmentally sensitive features at the Proposed Site.

53. NJNG will apply for a Monmouth County Road Opening Permit once the approval requested herein has been obtained from the Board.

VIII. REQUEST FOR CONSOLIDATION WITH BPU DOCKET NO. GO17010023

54. The instant Petition is obviously very closely related to NJNG’s prior Petition to the BPU concerning the Regulator Station at the Original Proposed Site in Holmdel, which, as discussed herein above, is currently pending before the Board and the OAL in BPU Docket No. GO17010023, OAL Docket No. PUC 1160-2017N. Because the two matters are inextricably

interrelated, NJNG requests that the Board consolidate this Petition with the pending matter under Docket No. GO17010023, and transmit this matter to the OAL with a request that it be consolidated there with OAL Docket No. PUC 1160-2017N. Consolidation of the two matters will result in administrative economy.

IX. REQUEST FOR EXPEDITED RELIEF

55. NJNG designed the Facility to provide much needed reliability and supply security to the residents of Holmdel and surrounding municipalities. As a result, NJNG requests an expedited review of this Petition to avoid any delays in the completion of the Regulator Station, so that it will be operational by the 2018-2019 heating season.

WHEREFORE, New Jersey Natural Gas Company requests that the Board:

- (1) determine that the location and construction of the Regulator Station, as more specifically described herein, is reasonably necessary for the service, convenience and welfare of the public;
- (2) determine that no alternative site or sites are reasonably available for the Regulator Station to achieve an equivalent public benefit;
- (3) order that the zoning, site plan review and all other Municipal Land Use Ordinances or Regulations promulgated under the MLUL, including specifically the Zoning and Land Use Ordinances and all regulations promulgated thereto by Holmdel, shall have no application to the Regulator Station, and authorize the Company to construct the Facility as set forth in the Petition and supporting testimony and exhibits; and

- (4) grant such other and further relief as may be required.

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Petitioner
New Jersey Natural Gas Company

Dated: November 28, 2018

By: 
Gregory Eisenstark, Esq.

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IN THE MATTER OF THE	:	SUPERIOR COURT OF NEW JERSEY
PETITION OF NEW JERSEY	:	APPELLATE DIVISION
NATURAL GAS COMPANY	:	DOCKET NO. A-001582-22T2
FOR A DETERMINATION	:	
CONCERNING THE	:	Civil Action
HOLMDEL REGULATOR	:	
STATION PURSUANT TO	:	On appeal from final action of the
N.J.S.A. 40:55D-19 -- 2017	:	New Jersey Board of Public Utilities
PETITION AND IN THE	:	in BPU Dockets GO17010023 and
MATTER OF THE PETITION	:	GO18111257
OF NEW JERSEY NATURAL	:	
GAS COMPANY FOR A	:	
DETERMINATION	:	
CONCERNING THE	:	
HOLMDEL REGULATOR	:	
STATION PURSUANT TO	:	
N.J.S.A. 40:55D-19 -- 2018	:	
PETITION	:	

**REPLY BRIEF
OF APPELLANT, TOWNSHIP OF HOLMDEL
WITH APPENDIX**

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Dated: September 20, 2023

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PRELIMINARY STATEMENT

Intervenor Township of Holmdel files this consolidated reply brief to the briefs of the Board of Public Utilities (BPU or Board), Division of Rate Counsel (RC) and New Jersey Natural Gas (NJNG). We will assume the court is familiar with our initial brief (Hb) and its arguments and will not repeat or summarize them before addressing the other parties' arguments. We will largely address the NJNG brief, since the BPU brief mostly echoes its arguments. We will follow the order of our initial brief. We will not address all of the other parties' arguments, but that simply means that we rest on our initial brief.

The NJNG brief (NJNGb) relies very heavily on exaggeration, colorful adjectives and adverbs (its gas service is always "lifeline," all of its engineers are "senior," etc.), and is duplicative. The NJNG brief makes a number of incorrect factual assertions, which space limitations do not allow us to address. We ask that the court be skeptical of NJNG's "facts" in considering this appeal. The BPU brief (BPUb) predictably relies heavily on claims of extreme deference that are not justified by the law and otherwise adds nothing to the arguments of NJNG. We will not address it further. The RC brief (RCb) adheres to that agency's interpretation of its responsibility that limits it to merely reflexively opposing any cost that might be imposed on ratepayers, no matter the

Legislative policy is or what benefits that might bring. The RC brief, therefore, curiously ignores that the NJNG purchased the proposed gas combustion regulator we challenge here in a non-competitive, sole-source procurement. The RC brief needs no other response.¹

ARGUMENT

1. The Standard Of This Court's Review

The parties disagree on the degree of deference that this court owes to the Initial Decision (ID) and the BPU's Decision. We stand by our exposition of this point. Hb9. See, e.g., In Re Proposed Quest Academy Char., 216 N.J. 370, 385 (2013). "[A] failure to consider all the evidence in a record would perforce lead to arbitrary decision making." Id. at 386 (citations omitted). Also specifically to this case, a court may intervene when the agency action is "inconsistent with its mandate." Id. at 385 (citations omitted).

¹ The transcripts of the evidentiary hearings will be cited as follows in this brief, using the style for Appellate Division briefs:

#Tpage #:line #-line#. Thus,

1T = October 14, 2020

2T = October 16, 2020

3T = October 20, 2020

4T = October 21, 2020

5T = October 22, 2020

6T = October 23, 2020

A recent opinion of this court reinforces that an agency decision must be considered against the Legislature's intentions. In The Matter Of The Proposed Construction Of Compressor Station (CS237), Office Building And Appurtant Structures, Highlands Applicability Determination, Program Interest No.: 1615-17-0004-2 (APD200001), ___ N.J. Super. ___, (App. Div. August 31, 2023)("Compressor Station").

2. NJNG Always Has The Burden Of Proof And Persuasion

No party disputes that the governing statute is silent on the burden of proof. N.J.S.A. 40:55D-19. The issue is, therefore, committed to the courts. Our initial brief set out our Supreme Court's elaboration of how courts are to allocate burdens of proof. Hb9-10. NJNG relies on unreported and older decisions to dispute that it has the burden of proof in this proceeding. To the extent that it relies upon reported opinions of this court, this panel is not bound by a decision of another panel. See, e.g., Compressor Station, slip op. at 23, fn 15; Hra23. The older cases relied upon by NJNG do not accurately reflect the more developed law in New Jersey on burden of proof. Compressor Station also effectively placed the burden of proof in that case on the applicant. Slip op. at 7; Hra7; see also N.J.S.A. 13:20-28; -31.

3. The BPU Decision And Initial Decision Did Not Consider The Entire Record; They Relied Upon An Arbitrary And Capricious Selection Of NJNG's Pre-Filed Direct Testimony And Ignored The Cross-Examination Of NJNG's Witnesses

Insofar as the material facts are concerned, this is the heart of the case. The ID and the BPU Decision claimed to have "credited" the testimony of the NJNG witnesses on the critical issue of whether or not the proposed regulator station is "reasonably necessary." But our initial brief set out in considerable detail how the NJNG witnesses presented two testimonies that cannot be reconciled. Hb10-28. The first was the pre-filed, lawyer-curated written direct testimony. NJNG says that this is the customary way of presenting direct testimony in the Office of Administrative Law, but that does nothing to make it at all credible. Yet when confronted with cross-examination, those same witnesses conceded away nearly all of the important assertions in that written direct testimony. HB10-28.

NJNG's brief merely recites at length its witnesses' written direct testimony, with added embellishment. This is the testimony that the ID and the BPU Decision credited; their opinions cite almost exclusively to the pre-filed direct testimony. NJNG's brief says almost nothing about the extensive cross-examination we set forth in our initial brief, and claims without explanation that our brief "distorted" the NJNG's

witnesses' testimony on cross. We trust the court's reading of our extensive excerpts and the transcripts will show we have been faithful to the real facts.

The essential point is that neither the ID nor the Decision offered any explanation of why they credited one "testimony" but not the other. Since cross-examination is the bedrock test of credibility in our courts, this omission is surely fatal.

Here is what we hope is obvious to this court. In making its overblown claims in their brief and their witnesses' lawyer-curated written direct testimony, NJNG's own lawyers are trying to affirmatively prove that NJNG is a stupid, careless and irresponsible utility, willing to place itself and its customers at very considerable and almost daily risks of losses of (allegedly "lifeline") service and other devastating consequences." NJNGb7.

Worse still, NJNG first installed the 16-inch pipe that it claims can only be serviced by the expensive gas fired regulator in 2012. It also purchased the regulator in a sole source, non-competitive procurement in 2012. Since then, NJNG has conducted itself in a most casual manner, going through two zoning board proceedings, filing two petitions for relief from the BPU, and then allowing this proceeding to proceed at a relatively leisurely pace. The ALJ didn't issue the ID for over a year, but

NJNG made no attempt to hasten the ID. To give any credence to NJNG's claims is to accept that NJNG has been willing to expose itself and its customers to these very considerable risks from 2012 to this day and beyond, for eleven years. To credit this is to accept that NJNG is stupid, careless and irresponsible.

To credit this is also to accept that NJNG's lawyers have presented a prima facie case for negligence or worse. New Jersey law holds that public utilities are liable for consequential damages for their negligence even if the utility is in full compliance with all rules and regulations. See, e.g., Muise v. GPU, Inc., 332 N.J. Super. 140 (App. Div. 2000); see also Underwriters v. Public Electric, 459 N.J. Super. 436 (App. Div. 2019). And so NJNG's lawyers are also trying to prove that the company has been so stupid, careless and irresponsible as to expose its shareholders to substantial risks of expensive damages suits to be tried to a jury.

Of course, NJNG is not a stupid, careless and irresponsible natural gas company. Fortunately, the company's same witnesses, when compelled to answer cross-examination, proved that the current regulator is indeed safe, reliable and able to continue in service, certainly until the New Jersey Energy Master Plan deadlines for decarbonization take hold, and after. The facts of record prove that the

proposed regulator is wasteful and not reasonably necessary.

As set out in detail in our initial brief, NJNG's witnesses admitted on cross-examination that the current regulator station, in fact, has many more years of useful life; that the current regulator poses no risk of harm to the NJNG system, and no safety hazard to the surrounding community; that the current regulator can safely handle the reduced loads it is designed for; that the company's projected increase in load on this part of the system is approximately one percent a year and the current regulator can handle it.

As we noted and as the NJNG brief bears out, the company's claim for the need to replace this reliable and safe current regulator is thus based entirely on claims of horrific consequences of "icing" problems. Again, NJNG brief reads as if it is trying to convince this court that it is a stupid, careless and irresponsible company. It isn't, and the company's witnesses conceded away these exaggerated and baseless predictions on cross-examination. The current regulator is safely monitored in real time in the company's control center² ; the company

² NJNG says there is something lacking because the current regulator is not monitored in its "SCADA system," as opposed to the current downstream pressure monitor that is read in the control center. NJNGb9. Again, assuming NJNG is not a stupid or irresponsible company, its "senior engineers" have obviously concluded that this is a perfectly safe and reliable means of monitoring and avoiding serious

has many underground vaults comparable to the one in which the temporary regulator is installed; the company has never notified Township or other local officials, or pipeline safety officials (including the BPU), or even NJNG's own risk management offices, of these supposed lurking disasters; the current regulator has had just two icing incidents including up to the present day,³ that needed attention, and which were promptly repaired without any real risk of loss of service (and again, no local or other safety officials were ever notified of these incidents). Hb24-27. NJNG's lawyers' overblown claims are firmly rebutted by their witnesses' answers on cross-examination.

The choice for the ALJ and for the Board was this. They could credit NJNG's carefully curated, written direct testimony, and this is the choice they made. Or they could credit the testimony of the very same witnesses on cross-examination, which our jurisprudence says is the true test of credibility. By crediting the written testimony, disregarding the cross-examination testimony, and by not explaining this decision,

consequences. NJNG also never said why it couldn't monitor the current regulator in the SCADA system, which common sense tells us was a deliberate choice.

³ "NJNG has been fortunate to avoid service interruptions to date...." NJNGb15. Obviously, luck has nothing to do with it.

the ID and the BPU Decision are arbitrary and capricious in disregard of the "entire record."

Throughout its discussion of these non-existent problems and elsewhere, the NJNG brief repeatedly emphasizes that it must install the gas combustion regulator to provide "safe, adequate and proper service," citing N.J.S.A. 48:2-3. The ID and the Decision did the same. Thus, NJNG's brief in effect contends that for the past eleven years since 2012 it has been in violation of its statutory duty and has not been providing "safe, adequate and proper service." Its witnesses on cross-examination show that it has, and can continue for many years. Nonetheless, the ID and the BPU have committed errors of law, because the statute requires more:

The board may, after public hearing, upon notice, by order in writing, require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State, and including furnishing and performance of service in a manner which preserves and protects the water quality of a public water supply, and to maintain its property and equipment in such condition as to enable it to do so.

[N.J.S.A. 48:2-3, emphasis added.]

Thus the Legislature required just as much attention to the environmental consequences of utility service as the provision of service itself, a mandate that has added weight here with New Jersey's climate

laws. None of the ID, the BPU Decision nor NJNG (nor the BPU brief nor the RC brief) ever cites or applies the underscored language of this provision, a clear error of law to which this court owes no deference.

4. The BPU Decision And Initial Decision Are Fatally Wrong About The Application Of New Jersey's Climate Law To This Proceeding

Our brief set out the very extensive body of law that the Legislature has enacted to address and mitigate the very real effects of climate change. Hb29-37. None of it is subject to any serious dispute. We also discussed at length the provisions of the State's forward-looking 2019 Energy Master Plan (EMP), and the legal error of the ID and the BPU Decision in relying on the "law of the case" on a preliminary procedural motion to disregard the plain meaning of the law and the EMP. Hb48.

The heart of the error by the ID and the BPU Decision is that the Legislature has directed the maximum application of and compliance with the EMP as a matter of law. N.J.S.A. 52:27F-15b declares that it is "the intention of the Legislature that the actions, decisions, determinations and rulings of the State Government with respect to energy shall to the maximum extent practicable and feasible conform to the energy master plan adopted by the Department pursuant to section 12 of this act." (Emphasis added.) As this is a matter of law, the BPU is

not entitled to any deference. This is a command and needs no regulations or any further action; it is self-executing. This case ended in a "decision[], determination[] and ruling[] of the State Government with respect to energy" and the BPU was, therefore, as a matter of law required to apply the 2019 EMP "to the maximum extent practicable and feasible." It did not, and that's a reversible error of law.

Our initial brief anticipated most of NJNG's arguments. But NJNG's brief now makes a strange argument: it claims that the EMP is merely an administrative directive as it was not adopted pursuant to notice and comment procedures. NJNGb40. This is clearly wrong as it contradicts the plain language of the statute, which doesn't say "if there is notice and comment;" it says "shall, to the maximum extent practicable and feasible." Neither NJNG nor the BPU offers any reason why adherence to the EMP in this case is not practicable or feasible.

NJNG essentially asks this court to ignore the extensive climate change law. In addition to our discussion in our initial brief, Hb29-37, we rely on the extensive discussion in this court's recent opinion in Compressor Station, supra. In that case, the court considered a challenge to the Department of Environmental Protection's issuance of a determination that a proposed gas pipeline project qualified for a statutory exemption from detailed review because it was "routine" to

the pipeline's infrastructure. The court reversed the DEP's finding.⁴

The court began with an extensive exposition on how to apply the law on statutory construction, summed up by "the language [the statute], and its statutory context, as well as the history of the [statute]..." Compressor Station, slip op. at 4; Hra4. The court noted that "although we ordinarily accord substantial deference to an agency's interpretation of a statute the agency is charged with enforcing, no deference is required when 'an agency's interpretation is contrary to the statutory language or if the agency's interpretation undermines Legislature's intent.'" Id. at 10. The operative words are "no deference," not some form of reduced deference.

The BPU Decision is contrary to the statutory language quoted above and undermines the Legislature's intention expressed in several statutes, by resorting to an absurd de minimis test, as discussed below.

The opinion includes a scholarly discussion of how to interpret the words of the exemption according to canons of construction. Id. at 10-22. But it did not stop there. It proceeded to a robust discussion of the

⁴ NJNG says it has nearly completed construction of the proposed regulator. We note that in Compressor Station the applicant had also begun construction, and the court noted that this was "at [the applicant's] own risk, of course. Slip op. at 8, fn.8; Hra8. The same would be true here; Holmdel's application for a stay was denied by this court.

purposes and history of the Highlands Act. So here must this court give meaningful consideration to the consistent, repeated expressions of the Legislature that use and consumption of natural gas and other fossil fuels must be reduced and phased out. Considered against this extensive body of law, the decisions of the ID and the BPU are arbitrary and capricious and entitled to no deference because they didn't consider "the language [the statute], and its statutory context, as well as the history of the [statute]...." As we noted, the ID dismissed the EMP in a preliminary erroneous ruling and thereafter refused to reconsider it citing the law of the case, which was erroneous. The BPU approved this.

That led to a fundamental reversible error. It is egregiously arbitrary, and contrary to the Legislature's multiple expressions mandating immediate and continuing de-carbonization, for the ID to have accepted NJNG's testimony that "[the proposed regulator's] emissions were also determined to be negligible when compared to the annual greenhouse gas emissions present in the state from other sources." Ha80. It is just as egregiously arbitrary, and contrary to the Legislature's intentions, for the BPU to have said that "the proposed facility's emissions would be minimal compared to the overall emissions in the State." Ha56. This is not implementing the EMP and the extensive body of climate change law "to the maximum extent practicable and

feasible," it is expressing complete disregard.

If any individual proposal is to be measured against all of the total emissions in the entire State, from all sources (all tailpipes, powerplants, industrial plants, offices, residences, etc.), that amounts to no limitation at all. This error is compounded because it disregards that the current regulator has no greenhouse gas emissions.

5. The Proposed Regulator Station Is Not A Reliability Project, But A Costly Stranded Asset In The Making

NJNG has persistently claimed throughout this proceeding and its brief that the proposed gas combustion regulator is a "reliability project," NJNGb36-37, as if the mere incantation of that phrase will excuse all manner of refusal to comply with the law. It also persistently claims that the proposed regulator is not a capacity expansion project, which is tantamount to an admission that if it is a capacity expansion project, it should be subjected to severe scrutiny. The ID and the Decision seemingly accepted this claim. But it is demonstrably factually incorrect, and thus the ID and Decision are arbitrary and capricious in relying on this claim to support their decisions.

This "reliability project" claim arbitrarily and capriciously conflates two separate and discrete infrastructure installations at least a decade apart. The company claims that the installation of the 16-inch

pipe was a reliability project, because federal regulations required that its system be capable of safety inspections by means of an internal device known as a pig. Hb6.⁵ But even if we accept that the 16-inch pipe was a "reliability" project, the regulator is emphatically not. It is a capacity expansion project. The current regulator, by the company's own witnesses' admissions, is providing all the reliability that the 16-inch pipe needs now and into the decarbonized future. The proposed regulator adds nothing by way of reliability – it is the equivalent of demanding a gas-guzzling, greenhouse gas-emitting Maserati to replace a perfectly competent Ford Focus, confident that someone else will pay for it. (Unlike the Focus, the current regulator has no emissions at all.) The BPU's "finding" that it isn't a capacity expansion project, Ha55, is, therefore, arbitrarily and capriciously incorrect. To put it simply, and as NJNG's own witnesses admitted, if approved, the proposed regulator will permit the 16-inch line to be operated at maximum allowable operating pressures in excess of 700 psi as opposed to the current

⁵ The record actually reflects that the BPU approved this replacement on an accelerated basis to provide economic development benefits in the 2008 recession. Ha521. The record also reflects that NJNG's "senior engineers" designed an incompetent installation of the 16-inch line by not including ports for insertion and removal of the pig. This means that a portion of Holmdel Road will need to be torn up to get access to the pipe to insert the smartpig.

operating pressures of 425-450 psi. This would enable the 16-inch line to transport significantly more natural gas.

When first installed in 2012, as we have noted, NJNG installed the current regulator to do the job of de-pressurizing the gas volumes from wholesale transmission pressures to end-user pressures. It has been providing "safe, proper and adequate service" with salutary environmental effects for over a decade, and is capable of continuing for many more years. It is, in fact, capable of providing that quality of service for NJNG's anticipated demand on its system in this area. It can do that without any emissions at all. But its defect as far as NJNG is concerned is that it will not serve the higher transportation pressures that would allow the 16-inch pipe to transport more gas, and it is thus acting as a capacity limitation.

Even if it never says so, the facts of record show that NJNG insists on the gas combustion regulator for two reasons. The first is that it has already purchased that regulator, in a sole source, non-competitive procurement, in 2012. According to the RC brief, RCb13, NJNG has already spent nearly \$5 million pursuing this proposal, perhaps more if we include the continuing costs. NJNG refused to disavow trying to recoup these costs from ratepayers. 2T124:1-22; 2T126:2-8. But the current regulator's real shortcoming for NJNG is that it means the 16-

inch pipe must be operated at less than maximum pressures, and that means that NJNG can't sell more gas. Selling more gas is what NJNG wants to do for its shareholders; selling more gas, of course, is contrary to New Jersey's climate laws and regulations. But again, NJNG's own witnesses admitted that the current regulator is capable of handling anticipated demand, so factually there is no case to be made for moving significantly larger volumes of carbon-emitting gas in this area.

Unless NJNG has been intentionally violating its statutory obligations, the current regulator has been providing safe, adequate and proper service in an environmentally responsible manner for eleven years and is capable of continuing for many years to come. The facts of record refute the claim that the proposed gas combustion is a "reliability project."

6. The BPU and the Initial Decision Erred As A Matter Of Law In Ignoring The Decisions And Conclusions Of The Holmdel Zoning Board And Accepted And Relied Upon Paid "Expert" Testimony That Contradicted The Expert Findings Of The Holmdel Zoning Board

The BPU must consider the "community zoning plan and local ordinance" in implementing N.J.S.A. 40:55D-19. In Re Pub Serv. Elec. & Gas Co., 35 N.J. 358, 377 (1961). Our initial brief noted the absurdity of the ID and the BPU relying on an expert paid by NJNG to support its claim that the proposed regulator is consistent with Holmdel's zoning

laws. Hb61-62. We noted that neither the OAL nor the BPU possesses any history or expertise on this subject, which is a peculiarly local issue. We noted that our courts have repeatedly held that the real expert on a municipality's zoning is its own Zoning Board of Adjustment, Hb61, which in Holmdel after extensive hearings in which NJNG presented witnesses and legal arguments, twice rejected the proposed gas combustion regulator. We stand by those arguments. The BPU must consider those decisions, and give them at least as much weight as utility-paid testimony.

We only note here that there is some limited authority that implicitly supports the notion that the non-expert BPU can and should ignore the local zoning authorities in implementing its responsibilities under N.J.S.A. 40:55D-19. But as noted most recently in Compressor Station, supra, slip op. at 23, Hra23, this panel is not necessarily bound by another panel. We ask that the court clarify that in these cases, the BPU must consider the local zoning authorities' decisions and give them at least weight equal to any paid expert evidence.

7. The BPU Arbitrarily And Capriciously Approved NJNG's Failure To Consider Alternatives

NJNG and the BPU agree that our law requires that in applying N.J.S.A. 40:55D-19, the BPU must meaningfully consider "[a]lternative

sites or methods and their comparative advantages and disadvantages to all interests involved, including cost." In re Public Service Electric & Gas Co., supra, 35 N.J. at 377 (emphasis added); accord, In Re Monmouth Consolidated Water Co., 47 N.J. 251, 259-260 (1966). These alternatives include not just doing nothing by continuing the current regulator, which has no emissions and no added cost of \$5 million or more, but giving meaningful consideration to a superior heat source, a catalytic heater.

Our initial brief noted that NJNG's written, lawyer-curated direct testimony made claims that the company had supposedly experienced very, very serious difficulties with catalytic heaters. NJNG's brief repeats these "unreliability" claims, with further embellishment. NJNGb32-37. These claims evaporated, as did so much of NJNG's case, on cross-examination. Hb53-61. In addition to the other non-problems, the court should take note of a simple fact that NJNG doesn't care to mention. The company installed catalytic heaters in 2008-2010. The last of those supposedly very, very serious problems ended in 2015, with the manufacturer picking up most of the costs attributable to the problems. The petition to the Holmdel Zoning Board for this site was filed in 2018. NJNG had plenty of time to speak to other catalytic manufacturers, but it didn't. NJNG purchased the gas combustion heater it now wants to

install, in a sole source, non-competitive procurement, in 2012. That's
why it never considered any alternative.

CONCLUSION

For the reasons set forth in this brief and our initial brief, the
Township of Holmdel respectfully requests that this court vacate the
Decision of the Board of Public Utilities and the Initial Decision.

Respectfully submitted,

POTTER AND DICKSON

By /s/ Peter Dickson
Peter Dickson
Attorney for the Appellant,
Township of Holmdel

IN THE MATTER OF THE	:	SUPERIOR COURT OF NEW JERSEY
PETITION OF NEW JERSEY	:	APPELLATE DIVISION
NATURAL GAS COMPANY	:	DOCKET NO. A-001582-22T2
FOR A DETERMINATION	:	
CONCERNING THE	:	Civil Action
HOLMDEL REGULATOR	:	
STATION PURSUANT TO	:	On appeal from final action of the
N.J.S.A. 40:55D-19 -- 2017	:	New Jersey Board of Public Utilities
PETITION AND IN THE	:	in BPU Dockets GO17010023 and
MATTER OF THE PETITION	:	GO18111257
OF NEW JERSEY NATURAL	:	
GAS COMPANY FOR A	:	
DETERMINATION	:	
CONCERNING THE	:	
HOLMDEL REGULATOR	:	
STATION PURSUANT TO	:	
N.J.S.A. 40:55D-19 -- 2018	:	
PETITION	:	

**APPENDIX OF REPLY BRIEF
OF APPELLANT, TOWNSHIP OF HOLMDEL
Pages Hr1a to Hr23a**

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Dated: September 20, 2023

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3616-20

IN THE MATTER OF
PROPOSED CONSTRUCTION
OF COMPRESSOR STATION
(CS327), OFFICE BUILDING
AND APPURTENANT
STRUCTURES, HIGHLANDS
APPLICABILITY
DETERMINATION, PROGRAM
INTEREST NO.: 1615-17-0004.2
(APD200001).

APPROVED FOR PUBLICATION

August 31, 2023

APPELLATE DIVISION

Argued February 8, 2023 – Decided August 31, 2023

Before Judges Accurso, Firko and Natali.

On appeal from the New Jersey Department of
Environmental Protection.

Daniel Greenhouse argued the cause for appellants
Food & Water Watch, New Jersey Highlands
Coalition, and Sierra Club (Eastern Environmental
Law Center, attorneys; Daniel Greenhouse and
William D. Bittinger, on the briefs).

Jason Brandon Kane, Deputy Attorney General,
argued the cause for respondent New Jersey
Department of Environmental Protection (Matthew J.
Platkin, Attorney General, attorney; Melissa H. Raksa,
Assistant Attorney General, of counsel; Jason Brandon
Kane, on the brief).

Richard G. Scott argued the cause for respondent Tennessee Gas Pipeline Company, LLC (Rutter & Roy, LLP, attorneys; Richard G. Scott, Christine A. Roy, and Monica N. Stahl, on the brief).

The opinion of the court was delivered by

ACCURSO, P.J.A.D.

The sole question addressed on this appeal, one we've not had to decide before, is one of statutory interpretation.¹ The Department of Environmental Protection issued a Highlands Applicability Determination (HAD) to Tennessee Gas Pipeline Company, LLC exempting construction of a new compressor station in the Highlands Preservation Area from permitting review under N.J.S.A. 13:20-28(a)(11) (Exemption 11). Exemption 11 relieves a public utility from having to obtain a Highlands Preservation Area Approval for "routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or

¹ Although the appellant in In re New Jersey Department of Environmental Protection Conditional Highlands Applicability Determination, Program Interest No. 435434, 433 N.J. Super. 223, 237 (App. Div. 2013), argued the Highlands Applicability Determination challenged in that case did not encompass a routine upgrade, and the DEP argued "the Legislature intended the word 'routine' to modify 'maintenance and operations' and not the other exempted activities," we found no need to resolve the question. We determined in that case "that, even if the exemption is interpreted as requiring that an upgrade be 'routine,'" the utility line upgrade at issue there could fairly be characterized as a routine one. Ibid. We do not find the case instructive here.

systems," so long as "the activity is consistent with the goals and purposes of" the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 to -35. The Department issued the HAD without a determination as to whether the new compressor station qualifies as a "routine upgrade" to Tennessee's existing gas pipeline system because the DEP maintains "routine" in Exemption 11 modifies only "maintenance and operations" and does not modify "upgrade."²

Appellants Food & Water Watch, New Jersey Highlands Coalition, and Sierra Club have appealed the HAD,³ contending we should apply the doctrine of *noscitur a sociis*, "an ancient maxim of statutory construction that the meaning of words may be indicated and controlled by those with which they are associated," Germann v. Matriss, 55 N.J. 193, 220 (1970), and find "the

² The HAD also refers to Exemption 11 in the Highlands Act Rules, which, as to the issue that concerns us, simply parrots the language of the statute. See N.J.A.C. 7:38-2.3(a)(11).

³ Appellants initially failed to name Tennessee as a party. Tennessee filed a motion to intervene as of right, which we denied, and a motion for reconsideration and for permissive intervention, which we also denied. The Supreme Court granted Tennessee's motion for leave to appeal those orders and held "[b]ased on the role Tennessee played in obtaining this administrative relief from the NJDEP, Tennessee is an 'interested party' under Rule 2:5-1(d) and should have been included as a party in the Notice of Appeal and served accordingly." In re Proposed Constr. of Compressor Station (CS327), 250 N.J. 365, 368 (2022). The Court remanded the case to us "to permit appellants to file an amended Notice of Appeal and Case Information Statement that names Tennessee as an interested party pursuant to Rule 2:5-1(d)." Ibid. Tennessee has since participated as a party "defendant" in this appeal.

word 'routine' not only modifies 'maintenance and operations' but also 'upgrade.'" We agree with appellants the language of Exemption 11 and its statutory context, as well as the history of the Highlands Act, all point to the Legislature having intended to exempt only routine upgrades to a public utility's lines, rights of way or systems in the Preservation Area from the strictures of the statute.

Tennessee, however, only ever contended before the agency that its proposed new compressor station in the Preservation Area is an "upgrade" to its pipeline system. And although counsel for the DEP asserted at oral argument the project could qualify as a "routine upgrade" entitling Tennessee to a HAD under Exemption 11, there is nothing in the agency record to indicate the Department ever considered the question, much less decided it. See In re Petition of Elizabethtown Water Co., 107 N.J. 440, 460 (App. Div. 1987) (noting "[t]he grounds upon which an administrative order must be judged are those upon which the record discloses that the action was based" (quoting Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 87 (1943))). We thus vacate the HAD and remand for the DEP to consider whether Tennessee's proposed compressor station qualifies as a "routine upgrade" to its

pipeline system, entitling it to a HAD under our construction of the language of Exemption 11.⁴

We sketch only so much of the facts and procedural history as necessary to put our decision in context. Tennessee is a federally regulated natural-gas company that owns and operates a natural gas transmission system stretching northeastward from the Gulf states to New England. As part of its "East 300 Upgrade Project," Tennessee intends to install new compressor units in two existing compressor stations⁵ along its "300 Line," one in Pennsylvania and one in Sussex County, and to construct a new station and appurtenant facilities in West Milford, in Tennessee's existing right-of-way on the site of a former quarry.

The new station would house a 19,000 hp-rated electric motor-driven compressor unit and connect to Tennessee's 300 Line pipeline just south of the

⁴ We do not consider whether Tennessee qualifies as a public utility for purposes of qualifying for Exemption 11 as appellants only challenged Tennessee's status in their reply brief. See Borough of Berlin v. Remington & Vernick Eng'rs, 337 N.J. Super. 590, 596 (App. Div. 2001).

⁵ Tennessee asserts that "[c]ompressor stations, also known as pumping stations, compress natural gas by raising the pressure to 'push' gas through the pipeline." It explains the gas in the pipeline "enters a series of scrubbers and strainers, is compressed by the compressor, cooled and then continues through the pipeline until it is delivered to a customer or reaches the next compressor station."

station on the same site.⁶ Tennessee contends the East 300 Upgrade Project is necessary to "increase the capacity" of its existing pipeline system and "to respond to the request of" Consolidated Edison for 115,000 dekatherms per day of firm transportation capacity for its customers in Westchester County.

Because the proposed West Milford compressor station is located within the Highlands Preservation Area, the nearly 398,000-acre tract of the Highlands Region "subjected to stringent water and natural resource protection

⁶ In addition to the compressor building, Tennessee plans to construct a new 3,500-square-foot office building with potable water and a septic system, including a 1,000-gallon holding tank for waste, as well as a new 925-square-foot electrical building to house the variable frequency drive and motor control center for its compressor unit. Tennessee also plans to install the following auxiliary equipment:

(1) an electric motor ventilation system; (2) vent silencers; (3) gas coolers; (4) a lube oil cooler and piping; (5) filter separators; (6) an auxiliary building fitted with automation control panels; (7) an air compressor; (8) a 375-kilowatt emergency generator; (9) domestic fuel gas skid; (10) pipeline liquids storage tank; (11) building heaters; (12) mainline valve piping; and (13) suction, discharge, and vent piping.

Tennessee will also be building its own 69-kilovolt electrical substation on the site and constructing an electrical conduit from that electric substation to connect to an electric transmission line to be constructed by Orange and Rockland Utilities along Burnt Meadow Road, which borders the site. Tennessee estimates the cost of its East 300 Upgrade Project will be \$246 million. The West Milford compressor station is estimated to make up nearly \$108 million of those costs.

standards, policies, planning, and regulation," N.J.S.A. 13:20-2; DEP Highlands Water Protection & Planning Act Guidance, State of N.J., https://www.nj.gov/dep/highlands/faq_info.htm (last visited Aug. 25, 2023), Tennessee submitted a HAD application to the DEP, seeking a determination that construction of its proposed West Milford station is exempt from the Highlands Act, and thus it was not required to obtain a Highlands Preservation Area Approval from the DEP for the project.

Appellants submitted public comments opposing Tennessee's application, asserting construction of the West Milford compressor station was "not routine maintenance or an upgrade of utility lines or systems, but a massive expansion of operations in the protected Highlands Region." They contended Tennessee was "building a new facility to push more gas through pipelines that go to New York" having "no public benefit for the people of" New Jersey.

The Highlands Council, which the DEP routinely consults when considering a HAD application, submitted a letter to the Department stating the Council had reviewed Tennessee's application and found construction of the compressor station "consistent with the goals of the Highlands Act." The Council noted Tennessee had sufficiently "avoided and minimized impacts to Highlands resources" by repurposing a "historically disturbed" former quarry

from which "[c]ritical wildlife habitat areas are disconnected and non-functional," and that it did not object to the DEP issuing Tennessee an exemption for the project.

The DEP determined construction of the West Milford compressor station "meets the definition of 'Major Highlands Development'" under N.J.A.C. 7:38-1.4, but the project was not "regulated by the Highlands Act" because it qualified for Exemption 11 and was consistent with the Water Quality Management Plan rules.⁷ N.J.A.C. 7:38-2.4(a) and (e). In issuing the HAD, the Department did not state which one of the activities listed in Exemption 11 applied.⁸

⁷ Appellants have also contended on appeal that the "DEP's determination that the proposed project is consistent with the [Water Quality Management Plan] is arbitrary and capricious" because the Department failed to "view the totality of the proposed project." Because we agree with appellants' first point that the Department has misinterpreted Exemption 11, necessitating a remand to the agency, we do not reach their second point.

⁸ The Federal Energy Regulatory Commission (FERC), the agency that regulates Tennessee's facilities, rates, and types of service, subsequently granted Tennessee's application for a certificate of public convenience and necessity, finding Tennessee's plan "to install 300 feet of 36-inch-diameter unit piping and 1,400 feet of 42-inch-diameter suction and discharge piping connecting the compressor station to Tennessee's 300 Line" would "enable Tennessee to provide up to 115,000 [dekatherms] per day of firm transportation service, which constitutes 100% of the project's capacity, to ConEd," which had demonstrated "that natural gas demand in its service territories is exceeding its available firm natural gas interstate pipeline capacity and that additional transportation capacity is needed to serve its

As with any case in which we are called to interpret a statute, our "goal is to divine and effectuate the Legislature's intent." Perez v. Zagami, LLC, 218 N.J. 202, 209 (2014) (quoting State v. Buckley, 216 N.J. 249, 263 (2013)). As "[t]here is no more persuasive evidence of legislative intent than the words by which the Legislature undertook to express its purpose," id. at 209-10, we look first to the plain language of the statute, giving the "words their ordinary meaning absent any direction from the Legislature to the contrary," TAC Assocs. v. N.J. Dep't of Env't Prot., 202 N.J. 533, 541 (2010), "and read them in context with related provisions so as to give sense to the legislation as a whole," DiProspero v. Penn, 183 N.J. 477, 492 (2005).

existing and new customers." Tenn. Gas Pipeline Co., 179 F.E.R.C. ¶ 61,041, at ¶ 17 (2022). See 15 U.S.C. § 717f(c).

FERC denied Food & Water Watch's applications to stay construction pending appeal, Tenn. Gas Pipeline Co., 181 F.E.R.C. ¶ 61,051 (2022), and Food & Water Watch's challenge to FERC's approval of the project remains pending in the United States Court of Appeals for the D.C. Circuit, 179 F.E.R.C. ¶ 61,041, appeal filed, Nos. 22-1214 & 22-1315 (D.C. Cir. Dec. 13, 2022).

Appellants did not apply for a stay in this case, and we understand construction of the West Milford station is proceeding — at Tennessee's own risk, of course. See In re Request for Proposals #17DPP00144, 454 N.J. Super. 527, 575 (App. Div. 2018) (declaring nonconforming bidder "proceeded at its own risk" in assuming performance under the contract "in light of the significant, challenged deviation in its bid").

"If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over," and the court's job is done. TAC Assocs., 202 N.J. at 541 (alteration in original) (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)). But if the language is ambiguous and susceptible "to more than one plausible interpretation," DiProspero, 183 N.J. at 492, we turn to extrinsic aids to "effectuate the legislative intent in light of the language used and the objects sought to be achieved," Merin v. Maglaki, 126 N.J. 430, 435 (1992) (quoting State v. Maguire, 84 N.J. 508, 514 (1980)).

Our Supreme Court has long "adhere[d] to the canon of statutory construction that 'the general intention of a statute will control the interpretation of its parts.'" Waterfront Comm'n of N.Y. Harbor v. Mercedes-Benz of N. Am., Inc., 99 N.J. 402, 414 (1985) (quoting State v. Bander, 56 N.J. 196, 201 (1970)). Although we ordinarily accord substantial deference to an agency's interpretation of a statute the agency is charged with enforcing, no deference is required when "an agency's statutory interpretation is contrary to the statutory language, or if the agency's interpretation undermines the Legislature's intent."⁹ In re N.J. Tpk. Auth. v. AFSCME, Council 73, 150 N.J.

⁹ The DEP asserts that since Exemption 11 "was codified in DEP's rules, DEP has consistently interpreted the word 'routine' in Exemption #11 as only

331, 351 (1997). "Clear legislative intent cannot be trumped by countervailing administrative practices." Ibid.

In enacting the Highlands Act in 2004, the Legislature initiated an ambitious undertaking to protect the water and natural resources of the New Jersey Highlands, a nearly 800,000-acre area in the northwest part of the State "covering portions of 88 municipalities in seven counties," which provides clean drinking water to more than half the State's residents, against the environmental degradations of sprawl development. N.J.S.A. 13:20-2. Finding the then-existing land use and environmental regulation system inadequate to protect the region's resources, the Legislature mandated a comprehensive approach to land use planning, "complemented by increased standards more protective of the environment," to include identification of "a preservation area of exceptional natural resource value" for which the DEP would adopt "stringent standards governing major development." Ibid. It is thus beyond cavil that the Highlands Act represents "a comprehensive policy

modifying 'maintenance and operations'" (citing 38 N.J.R. 5011(a) (Dec. 4, 2006) (response to comments 3 and 4)). That response, however, does not reflect the interpretation claimed, noting only "the exemption for the routine maintenance and operations of public utility lines at N.J.A.C. 7:38-2.3(a)11." 38 N.J.R. 5011(a) (response to comments 3 and 4). There is no mention of "upgrade." Ibid. As far as we are aware, the only time the Department has asserted "routine" does not modify "upgrade" was in Conditional Highlands Applicability Determination, Program Interest No. 435434, 433 N.J. Super. at 233.

designed to protect environmental interests," exemptions from which are to be strictly construed. See M. Alfieri Co. v. State, Dep't of Env't Prot. & Energy, 269 N.J. Super. 545, 554 (App. Div. 1994).

The nub of the parties' dispute is whether an "upgrade of public utility lines, rights of way, or systems" must be "routine" in order to exempt the utility from the permitting requirements of the Highlands Act under Exemption 11 — which exempts entirely from all provisions of the Act and "any rules or regulations" adopted by the DEP pursuant to it:

the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems, by a public utility, provided that the activity is consistent with the goals and purposes of this act.

[N.J.S.A. 13:20-28(a)(11).]

Neither "routine" nor "upgrade" is defined in the statute.

Appellants argue the attributive adjective "routine" modifies each noun in the list, including "upgrade." They contend their interpretation is supported by the absence of a semicolon after "maintenance and operations," which would indicate the Legislature's intent to separate "routine maintenance and operations" from the other activities in the Exemption, and by the interpretive maxim "noscitur a sociis" — literally: "it is known from its associates." Isetts v. Borough of Roseland, 364 N.J. Super. 247, 257 n.4 (App. Div. 2003). They

also contend limiting the entire list of activities in the exemption to those of a routine nature best aligns with DEP's charge to implement "stringent standards governing major development," N.J.S.A. 13:20-2, in the Preservation Area and the goal of the regional master plan to "prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area," N.J.S.A. 13:20-10(b)(9).

The DEP and Tennessee counter that "routine" modifies only "maintenance and operations" as "'routine maintenance and operations' is set off from the rest of the list by a comma," and the disjunctive "or" before "upgrade" "signifies that each phrase is 'distinct and separate from each other,'" (quoting State v. N.T., 461 N.J. Super. 566, 571 (App. Div. 2019)). They argue "[t]he plain language of the exemption makes clear that upgrades to existing utility systems, provided that those upgrades are consistent with the goals and purposes of the Highlands Act, are exempt from the Highlands Act, NJDEP's implementing rules, and the Highlands Regional Master Plan." The DEP and Tennessee contend theirs "is the only interpretation that makes sense," because if "routine" modified "upgrade," then it would also modify "rehabilitation, preservation, reconstruction, [and] repair," which "would make no sense and thus would be an absurd interpretation."

Unfortunately, we do not find the "plain language" of Exemption 11 plain enough to resolve the parties' dispute. To the contrary, we find the language plainly susceptible to more than one interpretation. See DiProspero, 183 N.J. at 494. And although both sides present plausible constructions, we do not find them equally plausible. In our view, appellants have by far the better argument that the Legislature intended to limit the statutory exemption afforded public utilities to "routine" upgrades of their "lines, rights of way, or systems" in the Preservation Area in the same manner it does every other activity listed, that is "maintenance and operations, rehabilitation, preservation, reconstruction, [and] repair." N.J.S.A. 13:20-28(a)(11).

Although we think appellants have the better grammatical analysis, that is that the attributive adjective, otherwise known as the "prepositive modifier," "routine" modifies each noun in the list of exempt activities,¹⁰ we do not "pin

¹⁰ Antonin Scalia and Bryan A. Garner in their book Reading Law: The Interpretation of Legal Texts, 147 (2012), refer to this in their discussion of "Syntactic Canons" as the "Series-Qualifier Canon," that is "[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Among the examples they provide is this one: "[f]orcibly assaults, resists, opposes, impedes, intimidates, or interferes with — held, that forcibly modifies each verb in the list," id. at 148 (citing Long v. United States, 199 F.2d 717, 719 (4th Cir. 1952), in which the court determined "[t]he use of the adverb 'forcibly' before the first of the string of verbs, with the disjunctive conjunction used only between the last two of them, shows quite plainly that the adverb is to be interpreted as modifying them all").

heavy interpretive import" on the Legislature's choice of a comma over a semicolon here, Perez, 218 N.J. at 210; see 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 47.15 at 345 (7th ed. 2007) ("Punctuation is a most fallible standard by which to interpret a writing." (quoting Ewing's Lessee v. Burnet, 36 U.S. (11 Pet.) 41, 54 (1837))).¹¹ Instead, we are guided by two interpretive principles — that "exception[s] to the provisions of a comprehensive statutory scheme. . . . are to be strictly but reasonably construed, consistent with the manifest reason and purpose of the law," Serv. Armament Co. v. Hyland, 70 N.J. 550, 558-59 (1976), and that "whatever the rule of [statutory] construction, it is subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment read in full light of its history, purpose, and context." Chasin v. Montclair State Univ., 159 N.J. 418, 426-27 (1999) (alteration in original) (quoting State v. Haliski, 140 N.J. 1, 9 (1995)). Both point unerringly to the same result here.

¹¹ We have no quarrel with State v. N.T., 461 N.J. Super. 566 (App. Div. 2019), the case relied on by the DEP and Tennessee, but find it inapplicable here. In N.T., we held that portion of the expungement statute barring expungement of the records of a conviction for "[e]ndangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm," N.J.S.A. 2C:52-2, referred to distinct harms based on the "comma and the word 'or.'" 461 N.J. Super. at 571. The case did not address the treatment of an attributive adjective to a series of nouns in a list, the issue we address here.

No party disputes the manifest purpose of the Highlands Act is to reduce "the environmental impacts of sprawl development" in the Highlands Region by subjecting "major development" in the Preservation Area, which all agree the West Milford compressor station indisputably is, "to stringent water and natural resource protection standards, policies, planning, and regulation."

N.J.S.A. 13:20-2. One of the primary goals of the regional master plan for the Preservation Area is to "prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation."

N.J.S.A. 13:20-10(b)(9). Because the Legislature plainly intended to subject major development in the Preservation Area to stringent regulation, we are compelled to interpret exemptions from the Act narrowly. See M. Alfieri, 269 N.J. Super. at 554.

The main problem with the DEP and Tennessee's analysis from our perspective is that it is myopically focused on sentence structure, which we view as inconclusive, with no substantive analysis of the language of the exemption in light of the "history, purpose, and context" of the Highlands Act. Chasin, 159 N.J. at 427 (quoting Haliski, 140 N.J. at 9). That is, they fail to analyze or consider the meaning of "upgrade" with reference to the Act or to the other words with which it is associated in the exemption — those from which it should naturally gather meaning. See Jarecki v. G. D. Searle & Co.,

367 U.S. 303, 307 (1961). Looking at the statute from that perspective reveals that failing to allow "routine" to modify "upgrade" makes "upgrade" the odd item out in the list of "maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade," leaving "upgrade" alone with no implied limiting principle. N.J.S.A. 13:20-28(a)(11).

As in a verbal reasoning test that asks which item in a list of apple, orange, cheese, and chalk is unlike the others, "upgrade" without the modifier "routine" is unlike every other activity in the list of exemptions. An electric utility might, for example, "upgrade" its transmission lines by moving from aluminum and steel conductor cores to carbon fiber or "upgrade" a coal-fired plant by replacing it with a nuclear reactor. Both would readily qualify as "upgrades," although they are obviously of a vastly different character. To understand the sense in which the Legislature used "upgrade," we need to look to its statutory context, and particularly to the words "with which [it is] associated." Germann, 55 N.J. at 220.

The maxim *noscitur a sociis*, explained by the United States Supreme Court to mean "a word is known by the company it keeps," Jarecki, 367 U.S. at 307, "while not an absolute rule, serves as 'a helpful guide in ascertaining the intended scope of associated words or phrases,'" Isetts, 364 N.J. Super. at 257 (quoting Germann, 55 N.J. at 221). As other courts have noted, the maxim is

"wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth" to acts of the Legislature. Ibid. (quoting Jarecki, 367 U.S. at 307). Its application is particularly appropriate here, as we are construing the words of "an exemption from a comprehensive policy designed to protect environmental interests," M. Alfieri, 269 N.J. Super. at 554, which we are bound to interpret narrowly. The canon cautions us to take care against interpreting "upgrade" in a way that would give it a broad scope unintended by the Legislature.

Applying it here by allowing "routine" to modify "upgrade" makes upgrade consistent with the other activities included in the exemption. It removes "upgrade" from the status of an outlier and makes it consonant with "maintenance and operations, rehabilitation, preservation, reconstruction, [and] repair," N.J.S.A. 13:20-28(a)(11), powerful evidence in our view of the Legislature's intended scope of the word. See Scalia & Garner, Reading Law: The Interpretation of Legal Texts 195 ("When several nouns or verbs or adjectives or adverbs — any words — are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.").¹² Harkening back to our

¹² Scalia and Garner include *noscitur a sociis* in their discussion of "Contextual Canons," referring to it as the "associated-words canon," that is

electric utility example, allowing "routine" to modify "upgrade" would plainly differentiate the upgrade of the transmission wires from the upgrade of the coal-fired plant, although we do not mean to suggest an opinion on whether either would be appropriate for the Preservation Area.

In that regard, we reject the Department and Tennessee's contention that the limiting principle the Legislature imposed on the activities included in Exemption 11, including "upgrade," is not that they qualify as "routine," but that all must be consistent with the goals and purposes of the Highlands Act.

The Legislature has, to be sure, required the entire list of activities included in Exemption 11 to be "consistent with the goals and purposes" of the Highlands Act, N.J.S.A. 13:20-28(a)(11), but that is the case regardless of whether "routine" modifies every activity listed or only "maintenance and operations." Because any activity undertaken by a public utility in the Preservation Area with regard to its "lines, rights of way, or systems" must be "consistent with the goals and purposes" of the Highlands Act in order to be

"[a]ssociated words bear on one another's meaning." Scalia & Garner, Reading Law: The Interpretation of Legal Texts 195.

exempt from the Act's requirements, ibid., the proviso does not speak to the question of whether the Legislature intended "routine" to modify "upgrade."¹³

We fail to grasp — and neither the Department nor Tennessee explains — why "routine" modifying every listed activity, that is to read the statute to exempt only routine maintenance and operations, routine rehabilitation, routine preservation, routine reconstruction, routine repair, and routine upgrade, "would make no sense and thus would be an absurd interpretation," as they assert.

"Routine" is plainly intended to serve as a statutory limiting principle of the enumerated activities a utility may undertake in the Preservation Area with regard to its lines, rights of way, and systems without the DEP engaging in a permitting review. And although all the activities included in the list other than "upgrade" have implied limitations, "maintenance and operations" being

¹³ That point is easily illustrated by again considering our electric utility example and the issue before us. It is obvious a nuclear power plant would not be a "routine" upgrade of a coal-fired plant or consistent with the goals and purposes of the Highlands Act. It is considerably less clear, at least on this record, whether the construction of a new compressor station in the Preservation Area, which the Department deemed "consistent with the goals and purposes of the Highlands Act," a determination we do not reach, could also qualify as a "routine" upgrade of Tennessee's gas pipeline system. The questions are simply independent of one another.

the most obvious,¹⁴ we do not find it absurd, or indeed even odd, for the Legislature to have exempted only routine rehabilitation, preservation, reconstruction, repair and upgrades from the permitting requirements of the Act in the same manner it exempted only routine maintenance and operations, given the Legislature's avowed goal to subject "major development" in the Preservation Area "to stringent water and natural resource protection standards, policies, planning, and regulation." N.J.S.A. 13:20-2. In no way could the interpretation be regarded as one leading to an "absurd" result consistent with our case law. See, e.g., Robson v. Rodriquez, 26 N.J. 517, 528-29 (1958) (holding it "absurd" to interpret the Unsatisfied Claim and Judgment Fund Law to deny an uninsured person recovery from the Fund but allow her personal representative to recover if the uninsured person died before filing suit, even from a cause unrelated to the accident).

The Court has instructed "[t]he true meaning and intention of legislation must be derived from the whole and not from any single component part," lest

¹⁴ Indeed, reading "routine" to modify only "maintenance and operations" is much closer to an "absurd" interpretation of the statute. Of all the activities on the list, "maintenance and operations" most clearly implies "routine" activity, resulting in use of the modifier adding nothing to its meaning. See Long, 199 F.2d at 719. In interpreting a statute, we, of course, "endeavor to give meaning to all words and to avoid an interpretation that reduces specific language to mere surplusage." DKM Residential Props. Corp. v. Twp. of Montgomery, 182 N.J. 296, 307 (2005).

"distortion . . . result." Denbo v. Twp. of Moorestown, 23 N.J. 476, 481 (1957). It reminds that "[i]n enacting legislation the lawmakers are deemed to have had a definite purpose in mind, and to have included the component parts of the enactment to accomplish that purpose." Ibid.

The Legislature announced its purpose in enacting the Highlands Act in ringing tones, declaring the Highlands' "exceptional natural resources" in the form of clean drinking water, "clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora" were "at serious risk of being fragmented and consumed by unplanned development," and "because of [the Highlands'] vital link to the future of the State's drinking water supplies and other key natural resources," it was essential "that the State should take action to delineate within the New Jersey Highlands a preservation area . . . where stringent protection policies should be implemented." N.J.S.A. 13:20-2.

Guided by the Legislature's express declaration "that it is in the public interest of all the citizens of the State" that the Preservation Area be subject "to stringent water and natural resource protection standards, policies, planning, and regulation," ibid., we cannot accept the Department and Tennessee's position that the Legislature intended Exemption 11 for "the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or

systems" in the Preservation Area to exempt any upgrade a utility might propose and, specifically, to exempt Tennessee's construction of a new compressor station and appurtenant facilities, including its own electric substation, at a cost of over \$100 million with no showing it constituted only a "routine upgrade"¹⁵ of its gas pipeline system. Neither the language and structure of the Exemption nor the history and purpose of the Highlands Act support that result.

We accordingly vacate the HAD issued to Tennessee and remand the matter to the Department for further proceedings not inconsistent with this opinion, including but not limited to consideration of whether Tennessee's proposed compressor station can qualify as a "routine upgrade" to its pipeline system. We do not retain jurisdiction.

Vacated and remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

¹⁵ The parties dispute the meaning of a "routine upgrade" and whether it relates to a utility's "need to expand" existing utility services, as perhaps implied in Conditional Highlands Applicability Determination, Program Interest No. 435434, 433 N.J. Super. at 237, or whether it is instead related to "whether the project is a 'system' upgrade" in accordance with Exemption 11 and the DEP's rules, requiring assessment of "environmental impacts." As we are not bound by the decision of another panel of this court, Brundage v. Est. of Carambio, 195 N.J. 575, 593 (2008), and the issue is not squarely before us, we express no opinion on this point, deeming it a question for the Department in the first instance.



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October 23, 2023

Via eCourts Appellate

Joseph H. Orlando, Clerk
Superior Court of New Jersey, Appellate Division
R.J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

Re: I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Holmdel Regulator Station Pursuant to N.J.S.A. 40:55D-19 – 2017 Petition and I/M/O the Petition of New Jersey Natural Gas Company for a Determination Concerning the Holmdel Regulator Station Pursuant to N.J.S.A. 40:55D-19 – 2018 Petition,
Appellate Division Docket No. A-001582-22
BPU Docket Nos. GO17010023 & GO18111257

Sur-reply Letter Brief of Respondent New Jersey Natural Gas Company

Dear Mr. Orlando:

In accordance with the Court's October 18, 2023 Order, Respondent New Jersey Natural Gas Company ("NJNG"), submits this sur-reply letter brief solely addressing Appellant Township of Holmdel's ("Holmdel") reply brief arguments regarding the recently published decision in In the Matter of Proposed Construction of Compressor Station (CS327), Office Building and Appurtenant Structures, Highlands Applicability Determination, Program Interest No.: 1615-17-0004.2 (APD200001), Docket No. A-3616-20 (August 31, 2023) ("Compressor Station").

Relying on Compressor Station, Holmdel argues erroneously that the Court should accord "no deference" to the conclusion of the Board of Public Utilities (the "Board") that "the Project is consistent with the EMP's goals when considering NJNG's obligation to maintain a reliable and safe natural-gas system." Hrb12 (Holmdel argument); Ha55 (Board's finding regarding the EMP). However, nothing in Compressor Station requires—or permits—the Court to substitute Holmdel's policy preferences for the Board's considered interpretation of the EMP, its own planning and policy document. Neither Holmdel's reply brief nor Compressor Station refutes the principle that the Board's interpretation of its own policy and guidance document, the EMP, is entitled to deference. See NJNGb41.

Joseph H. Orlando, Clerk
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Holmdel wrongly asserts that the “robust discussion of the purposes and history of the Highlands Act,” see Hrb12-13, in Compressor Station gives this Court carte blanche to cast aside the Board’s interpretation of its own EMP in this case. But “[t]he sole question” addressed in Compressor Station “is one of statutory interpretation.” Compressor Station, slip op. at 2 (Hra2). Specifically, the Court interpreted an exemption in the Highlands Act for “routine maintenance and operations, rehabilitation, preservation, reconstruction, repair, or upgrade of public utility lines, rights of way, or systems.” Id. (citing N.J.S.A. 13:20-28(a)(11)). The issue was whether the word “routine” modifies only “maintenance and operations” or every term in the list. Id. at 3-4 (Hra3-4).

The Court held that “although both sides present plausible constructions,” appellants presented “the better grammatical analysis” of the word “routine” as a prepositive modifier that applied to all the terms in the list. Id. at 14, 16-19 (Hra14, 16-19). Thus, the Court remanded the matter to DEP so that the agency could make a finding as to whether the upgrade at issue was “routine.” Id. at 23 (Hra23). The discussion of the purposes and history of the Highlands Act only came about in Compressor Station as an “extrinsic aide” for interpreting statutory language that the Court found was “susceptible to more than one plausible interpretation.” Compressor Station, slip op. at 10, 14 (Hra10, 14).

Here, unlike Compressor Station, there is no question of statutory interpretation. The EMP statute states “the intention of the Legislature that the actions, decisions, determinations and rulings of the State Government with respect to energy shall to the maximum extent practicable and feasible conform with the energy master plan.” N.J.S.A. 52:27F-15b. The dispute here does not turn on the Board’s interpretation of the EMP statute cited above. Indeed, as noted and in contrast with Compressor Station, the Board here addressed the “conformance” requirement of the EMP statute with its finding that the Project “is consistent with the EMP’s goals.” Ha55. Holmdel takes issue with the Board’s interpretation and application of the goals stated in EMP itself, which is the Board’s own policy document.

The Board correctly found that the Project is consistent with the EMP given its “primary goal” to “[m]aintain existing gas pipeline system safety and reliability.” Ha490. Holmdel’s arguments ignore this key component of the EMP. The Board knows what its EMP means, and, contrary to Holmdel’s arguments, the EMP does not call for the immediate obsolescence of the existing natural gas system. Compressor Station certainly doesn’t either. The Board’s Decision should be affirmed.

Respectfully submitted,

s/ James C. Meyer

James C. Meyer

cc: All counsel of record