



**PARKER McCAY**

Parker McCay P.A.  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laurel, New Jersey 08054-5054

P: 856.596.8900  
F: 856.596.9631  
www.parkermccay.com

**Katelyn M. McElmoyl, Esquire**  
Direct : 856-985-4063  
kmcelmoyl@parkermccay.com

January 29, 2016

File No. 11762-0182

**Via Hand Delivery**

Honorable Irene Kim Asbury, Secretary  
NJ Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: 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  
The Township of Chesterfield's Response to NJNG's Initial Post-Hearing Brief**

Dear Secretary Asbury:

Please accept this letter memorandum of behalf of the Township of Chesterfield in lieu of a more formal memorandum in response to New Jersey Natural Gas Company's ("NJNG" or "Company") initial post-hearing brief.

As the Board is aware, initial post-hearing briefs were filed on January 22, 2016, on behalf of NJNG, the New Jersey Division of Rate Counsel ("Rate Counsel"), the Burlington County Board of Chosen Freeholders ("Burlington County"), the Township of North Hanover ("North Hanover"), the Township of Chesterfield ("Chesterfield"), and the Pinelands Preservation Alliance ("PPA"). This submission supplements our prior brief.

**COUNSEL WHEN IT MATTERS.<sup>SM</sup>**

Mount Laurel, New Jersey | Lawrenceville, New Jersey | Atlantic City, New Jersey

LEGAL ARGUMENT

**I. NEW JERSEY NATURAL GAS DOES NOT HAVE THE “LAWFUL AUTHORITY” TO LAY OR MAINTAIN GAS PIPES OR MAINS FOR THE PURPOSES OF DISTRIBUTING OR TRANSMITTING NATURAL GAS WITHIN THE BOUNDARIES OF CHESTERFIELD; THEREFORE, THE BOARD OF PUBLIC UTILITIES CANNOT FORCE CHESTERFIELD TO ALLOW THE SRL SIMPLY BY DESIGNATING THE COMPANY’S PREFERRED ROUTE**

In its initial post-hearing brief (“NJNG Brief”), NJNG requests three (3) forms of relief from the Board of Public Utilities (“Board” or “BPU”). See NJNG Brief at 1. Following the three forms of relief, the Company inserts the following footnote:

NJNG also hereby requests that the Board authorize it to construct, lay, maintain and use facilities, conductors, mains and pipes, with the appurtenances thereto, in, through and beyond the public streets, roads, highways and/or places of the counties and municipalities described in its petition, for the purpose of transmitting through the same natural gas for use in its business.

Id. at fn 1. No citation or legal basis for this request is supplied. Aside from being incorporated into a summary conclusion, this request is never made or mentioned again within the brief. In fact, this request has never appeared anywhere else in the record throughout the entire proceeding. This footnote is the first mention of it. This specific request for the BPU’s authorization should be denied. Making the request for the first time in a post-hearing brief is simply not permitted and is certainly not appropriate.

Upon review of pertinent New Jersey statutes containing the same language mentioned in NJNG’s footnote request, it is clear that the Legislature has not granted the BPU the power to authorize a gas company to construct, lay, maintain, and use pipelines for the purpose of transmitting natural gas through a municipality that has not consented to such an installation by resolution or ordinance. The facts presented throughout the SRL proceedings demonstrate novel and unprecedented issues in recent New Jersey history, notwithstanding the BPU’s and NJNG’s

treatment of these proceedings, as if the opposition to the project by affected municipalities and counties was a mere nuisance.

Since NJNG has slipped in a footnote with no citation to legal authority in what appears to be a “backdoor” attempt at raising an issue it initially overlooked in its filings, the statutes referenced which must be considered are N.J.S.A. 48:9-17, N.J.S.A. 48:9-24, and N.J.S.A. 48:9-25.4. These provisions unmistakably apply to NJNG’s SRL Petition(s). While the BPU might not be accustomed to overseeing and ruling on such a contested case wherein several municipalities are seemingly being forced to accept the unilateral proposal of a large corporate gas company, the Legislature anticipated this contemptible scenario, and required that an affected municipality be a willing participant to a pipeline project from which it does not even stand to benefit.

Legislative intent regarding a municipality’s power and input during such proceedings is further clarified by way of comparing statutory language. In addition to N.J.S.A. 48:9-25.4, NJNG also brings the current Petition before the BPU pursuant to N.J.S.A. 40:55D-19, a provision of the Municipal Land Use Law (“MLUL”). Unlike N.J.S.A. 40:55D-19, which contains language allowing NJNG to bypass affected municipalities and local governing bodies and, instead, directly petition the BPU to request a waiver of all local zoning and planning laws<sup>1</sup>, the Title 48, Chapter 9 statutes discussed herein contain no such “bypass” ability. Therefore, original jurisdiction lies with affected municipalities when a gas company seeks to install

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<sup>1</sup> In pertinent part, N.J.S.A. 40:55D-19 states: “This act [(the MLUL)] or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service, if upon a petition of the public utility, the Board of Public Utilities shall after hearing, of which any municipalities affected shall have notice, decide the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.”

facilities and other infrastructure without a prior franchise agreement in place. NJNG has no statutory authority to directly petition the BPU for authorization of its request to “construct, lay, maintain and use facilities, conductors, mains and pipes” through affected municipalities like Chesterfield. Bypassing the affected municipalities is contrary to the clear language and intent of these statutes. Had the Legislature intended the interpretation that NJNG adopts, i.e. the existence of a “bypass” option, it would have included the language that is found in the MLUL statute, N.J.S.A. 40:55D-19.

Merely because the issues presented in this matter may be unprecedented does not mean that plain statutory language and legislative intent can be completely ignored or dismissed without any consideration. Each statute is discussed in turn and each provides a basis for a full denial of NJNG’s SRL Petition.

**A. N.J.S.A. 48:9-17 Specifically Requires that NJNG Obtain Chesterfield’s Consent in Order to “Lay Conductors and Install Related Facilities for Conducting Gas” Through Chesterfield; Since No Consent Has Ever Been Granted, the BPU is Prevented from Authorizing NJNG’s Footnote Request by Statutory Authority**

In pertinent part, N.J.S.A. 48:9-17 states:

Every [gas] company may lay conductors and install related facilities for conducting gas through the streets, alleys, squares and public places **in any municipality or municipalities in which it may lawfully operate, having first obtained the consent by resolution or ordinance of the governing body of such municipality for the furnishing of gas therein and the approval of such consent by the Board of Public Utility Commissioners.** The consent may be subject to reasonable regulations with respect to the opening of streets, alleys, squares and public places, not inconsistent with the provisions of this article.

N.J.S.A. 48:9-17. (emphasis added). According to the clear terms of the statute, in order for a gas company to lay conductors and install related facilities for conducting gas through a municipality, the company must first be “lawfully operating” within that municipality. Ibid.

“Lawful operation” is defined within the same statute and requires a twofold process: “the consent [of the affected municipality] by resolution or ordinance of the governing body” **and** “the approval of such [municipal] consent by the Board of Public Utility Commissioners.” Ibid.

"Where the state has thus established an agency of its own [(the BPU)] with plenary power to regulate utilities, it is universally recognized that municipalities cannot properly interpose their local restrictions **unless and only to the extent any power to do so is expressly reserved to them by statute.**" N.J. Natural Gas Co. v. Borough of Red Bank, 438 N.J. Super. 164, 178 (App. Div. 2014) (internal citations omitted)(emphasis in original). N.J.S.A. 48:9-17, beyond a shadow of a doubt, provides one of those instances wherein power is expressly reserved for the municipality. A municipality has the power to withhold or grant consent to a gas company for operation within its boundaries. If the statute requires municipal consent as part of a gas company's process to become “lawfully operational” within that municipality, the statute implicitly contemplates scenarios where municipal consent is withheld or denied and the gas company's status of being “lawfully operational” is likewise withheld or denied.

Chesterfield has never granted NJNG consent to operate within its boundaries for purposes of distributing gas within the municipality or for purposes of transmitting gas through the municipality. Indeed, NJNG has never sought that consent. As such, the process of conferring “lawful operation” does not even reach the second step: approval of municipal consent by the BPU. In no uncertain terms: Chesterfield has not granted its consent to NJNG to “construct, lay, maintain and use facilities, conductors, mains and pipes, with the appurtenances thereto, in, through and beyond the public streets, roads, highways and/or places of [Chesterfield Township], for the purpose of transmitting through the same natural gas.” Chesterfield, having never been



asked for such consent, has had no opportunity to exercise the discretion offered to it by the statutes to consider such a request, and, if granted, approve it by resolution or ordinance. No record at the local level has ever been created on this issue. There is, therefore, nothing to review, or from which to appeal. There is no consent which the BPU can approve or authorize at this juncture.

**B. According to N.J.S.A. 48:9-24, NJNG's Lawful Authority to Transmit Gas Through Chesterfield is Contingent on NJNG's Lawful Authority to First Distribute Gas Through Chesterfield; Since NJNG Lacks Lawful Authority to Distribute Gas Through Chesterfield, it also Lacks Lawful Authority to Transmit Gas Through Chesterfield**

In full, N.J.S.A. 48:9-24 states:

**Any corporation of this state, having lawful authority to lay or maintain gas pipes or mains in the streets and public places of a municipality for the distribution of gas, may use its pipes or mains within the municipality for the transmission of gas to another municipality, in the streets or public places of which it may also have lawful authority to lay or maintain gas pipes or mains for the distribution of gas. Nothing contained in this section shall grant to any corporation a franchise or right to lay down gas pipes for the distribution of gas in any municipality of this state.**

N.J.S.A. 48:9-24. (emphasis added). According to the clear terms of the statute, prior to a corporation's legal ability to transmit gas from or through "Municipality A" to "Municipality B," the corporation must have the "lawful authority" to distribute gas within both Municipality A and

B. Id.

Presently, NJNG has not been granted "lawful authority" to distribute gas within Chesterfield – as analyzed above, this would require Chesterfield's municipal consent by way of resolution or ordinance. Further, NJNG cannot obtain "lawful authority" simply by requesting it of the BPU as it did in its initial brief. See NJNG Brief at 1, fn 1; N.J.S.A. 48:9-17. Additionally, inasmuch as North Hanover has also never given consent to NJNG to construct, lay, or maintain

a pipeline within its own boundaries, NJNG is doubly prevented from transmitting gas between these towns since it does not have lawful authority to distribute gas in either Chesterfield or North Hanover.

Perhaps most importantly, the last sentence of this statute bears repeating and emphasis:

**“Nothing contained in [N.J.S.A. 48:9-24] shall grant to any corporation a...right to lay down gas pipes for the distribution of gas in any municipality of [New Jersey].”**

Id. The right or “lawful authority” to lay distribution pipes within a municipality is outlined in N.J.S.A. 48:9-17, as explained above. A twofold process is required: “the consent [of the municipality] by resolution or ordinance of the governing body” **and** “the approval of such [municipal] consent by the Board of Public Utility Commissioners.” N.J.S.A. 48:9-17. Without the lawful authority to distribute gas within the boundaries of Chesterfield, NJNG is prevented from transmitting gas through Chesterfield, by statute. As much as NJNG may believe it has a right to strong-arm small towns which oppose the installation of an unnecessary 30-inch, high-pressured pipeline right down the towns’ centers, forcing them to bear the entire burden without any benefit, the Company is mistaken.

**C. According to N.J.S.A. 48:9-25.4, the BPU is Not Needed to Designate a Pipeline Route Since the Burlington County Board of Chosen Freeholders, Chesterfield, North Hanover, Plumsted, and Various Public Officials Have Already Designated an Alternate, Practicable Route**

In full, N.J.S.A. 48:9-25.4 states:

Any gas company organized under the laws of this State in addition to but not in limitation of the powers conferred by the laws under which it was organized may construct, lay, maintain and use facilities, conductors, mains and pipes, with the appurtenances thereto, in, through and beyond any municipality or municipalities, for the purpose of transmitting through the same natural gas or any mixture of gas or gases of any other type or types for use in its business; provided, that in each case such corporation shall first have obtained a designation by the governing body or official having control thereof, of the public street, road, highway or place, which may be occupied by such corporation for such purpose. If any governing

body or official having control of any public street, road, highway or place, after having received from such corporation a request to designate such public street, road, highway or place, for occupancy by such corporation for such purpose, shall fail or refuse to make such designation or to designate a practicable route, the Board of Public Utility Commissioners, upon application by the corporation, and after hearing on notice to such governing body or official, shall make such designation.

N.J.S.A. 48:9-25.4. In the present proceedings, intervening and participant parties (Burlington County, Chesterfield, North Hanover, and Plumsted) proposed that NJNG use an alternate route for the SRL: Route 68 (a state highway and a large portion of which is comprised of four (4) lanes, with a large median running down the center) to the JCP&L electric easement to County Route 539.

As Chesterfield previously stated in its initial brief, despite the Company's repeated assertions, there is no law stating that a natural gas pipeline is prohibited from sharing an already-existing utility easement which crosses land that was later designated as preserved farmland. No farmland would be permanently disturbed or developed upon if the pipeline were co-located within the JCP&L electricity right of way. Under the terms of N.J.S.A. 48:9-25.4, Burlington County, Chesterfield, North Hanover, and Plumsted satisfied the burden of designating a "practicable route." The statute under which NJNG filed its Petition does not require that governing bodies or local officials designate the least expensive route for the Company or ratepayers; nor does it require that governing bodies or local officials designate the shortest route; nor does it require that governing bodies or local officials designate a route which has the least amount of stream crossings; nor does it require that governing bodies or local officials designate a route which involves the least amount of private easements. The **only** requirement, according to a law which has been plainly identified, is that the route be



practicable. Rt. 68 to the JCP&L electric easement to CR 539 is a practicable route and the BPU has the authority to order NJNG to use that route.

**“If any governing body or official having control** of any public street, road, highway or place, after having received from such corporation a request to designate such public street, road, highway or place, for occupancy by such corporation for such purpose, **shall fail or refuse to make such designation OR to designate a practicable route, the Board of Public Utility Commissioners**, upon application by the corporation, and after hearing on notice to such governing body or official, **shall make such designation.”** N.J.S.A. 48:9-25.4. (emphasis added). Since several governing bodies and officials have previously designated an alternate, practicable route, it was inappropriate for NJNG to file an application with the BPU for designation of the SRL’s route. By clear terms of the statute, the BPU does not make such a designation unless a governing body or official has refused or failed to designate the company’s proposed route or has refused or failed to designate a practicable route. Red Bank, 438 N.J. Super. at 180.

Until the unsupported claim that the SRL cannot follow the JCP&L route because of farmland preservation can be demonstrated as true by virtue of a law, regulation, or ruling, the route has not been shown to be impracticable. As such, NJNG’s Petition to the BPU for designation of its preferred route is premature and must be denied.

**D. “Municipal Consent” as a Prerequisite to the Presence of a Gas Company’s Infrastructure Within a Municipality is a Recurring Theme Throughout New Jersey Statutes Title 48 (Public Utilities), Chapter 9 (Gas Companies)**

The three (3) statutes previously discussed above (N.J.S.A. 48:9-17, N.J.S.A. 48:9-24, and N.J.S.A. 48:9-25.4) all either directly or indirectly reference a municipality’s ability to consent to a gas company’s presence within its borders or consent to a route designation.

Additionally, another statute within the same title and chapter also references “permission.” Permission by a municipality is required in order for a gas company to extend its mains and pipes to any neighboring municipality wherein no gas company exists. N.J.S.A. 48:9-23. There has to be a reason why the Legislature chose to use words like “permission,” “consent,” and “lawful authority” within all of these statutes that pertain to the installation of gas pipelines. That reason is now clear: the Legislature did not intend for gas companies to start installing pipelines anywhere they feel it may be necessary without some sort of check and balance system in place.

“The first step in divining legislative intent is to consider the statute's plain language, Town of Kearny v. Brandt, 214 N.J. 76, 98 (2013), and accord those words ‘their ordinary meaning and significance.’ DiProspero v. Penn, 183 N.J. 477, 492 (2005). ‘[W]e must examine that language sensibly, in the context of the overall scheme in which the Legislature intended the provision to operate[.]’ N.J. Dep’t. of Env’tl. Prot. v. Huber, 213 N.J. 338, 365 (2013). Moreover, ‘[w]hen interpreting multiple statutes governing the same subject, the Court should attempt to harmonize their provisions.’ Brandt, 214 N.J. at 98.” N.J. Natural Gas Co. v. Borough of Red Bank, 438 N.J. Super. 164, 177 (App. Div. 2014).

The statutes from Title 48, Chapter 9 must be harmonized with consideration given to the plain language stated within. When examples of plain language consist of “permission,” “consent,” and “lawful authority,” it is clear that the intent of the Legislature was never to allow the BPU or a gas company to force a municipality which did not consent to the company’s presence or installation of infrastructure within its boundaries to accept such infrastructure against its will. The BPU is urged to refrain from treating this Petition like other petitions where municipalities may have already been serviced by a gas company or demonstrated consent to the company’s installation of a pipeline by passing a resolution or ordinance in favor of the pipeline.

The current situation, wherein the SRL will not be servicing Chesterfield and wherein Chesterfield has not consented to the installation of the SRL, is completely unlike any other intrastate pipeline petitions that have come before the BPU and it should be treated as such.

**II. NOTHING IN NJNG'S INITIAL POST-HEARING BRIEF PROVES THAT THE SRL IS "REASONABLY NECESSARY FOR THE SERVICE, CONVENIENCE OR WELFARE OF THE PUBLIC"**

In its initial post-hearing brief, NJNG submitted 52 pages of rhetoric, naked conclusory statements, bald assertions, and vague buzzwords that look good in press releases ("reliability," "resiliency," and "redundancy"), but which enjoy no evidentiary foundation. Not unlike the rest of the proceedings regarding the SRL, NJNG has presented no proof which demonstrates that the SRL is reasonably necessary for the service, convenience or welfare of the public. Instead, NJNG relied upon the "trust me" approach in support of its Petition. The BPU, interveners, participants, and the general public are simply expected to take NJNG at its word that the SRL is necessary and will provide redundancy to a system that has never been shown to require any more added redundancies. Interveners, participants, and the general public have, based upon the record, rejected the invitation to play along. The BPU must do the same.

Post-hearing briefs filed by the Division of Rate Counsel, Pinelands Preservation Alliance, and North Hanover demonstrate that other parties aside from Chesterfield have recognized NJNG's complete lack of factual support for the Project. There is a lack of factual support to justify the sheer scope and size of the Project; there is a lack of factual support to show that the JCP&L alternate route was fully analyzed and vetted by the Company; there is a lack of factual support to demonstrate that the SRL is required for purposes of redundancy; there is a lack of factual support to prove any need at all for the SRL other than for corporate profit.

Finally, even a cursory review of the BPU's "Decision and Order" dated December 16, 2015, regarding South Jersey Gas Company's ("SJG") request to construct a 24-inch pipeline through portions of Cumberland, Atlantic, and Cape May counties, highlights just how completely devoid of factual support is this Petition for the SRL. The SJG Order is a matter of public record. The record created by SJG is full of independent studies which measure the risk of possible outages, measure the actual impact of a pipeline on SJG's liquid natural gas (LNG) reserves, and demonstrates that the B.L. England power plant can only be served by a new pipeline installation by SJG.

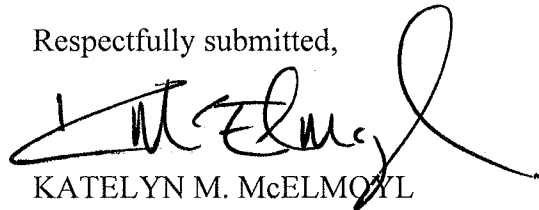
While Chesterfield takes no position on those issues, if SJG was able to proffer independent study after independent study (often authored by agencies other than itself) which demonstrated a need for a pipeline and provided comprehensive data to support its position, it is reasonable to expect NJNG to produce the same type of independent reports, analyses, and studies. For instance, the B.L. England plant is comparable to the Joint Base for NJNG. SJG provided multiple studies and modeling analyses to demonstrate the power plant's need for a pipeline and the effect that the pipeline could have on the plant. Here, all NJNG has ever produced is an unsworn, uncertified letter from the Joint Base's Commander, containing statements that directly contradict the Company's own testimony and discovery responses. There is simply nothing in the record that the BPU could use to make the determination that the SRL is reasonably necessary for the service, convenience or welfare of the public, other than the legitimate challenges raised by other parties and NJNG's unadorned, unsupported platitudes of "reliability and redundancy." For these reasons, NJNG has not satisfied its burden placed upon it with the filing of the Petition and all requests should be denied.

**CONCLUSION**

The Board is urged to refrain from treating this SRL Petition by NJNG like any other natural gas pipeline petition in the past – the facts and circumstances that have been uncovered during the proceedings herein demonstrate that the SRL Petition presents unprecedented issues and an overwhelming lack of factual support for the assertions made by NJNG. Simply because NJNG repeats “reasonably necessary,” “reliability,” and “redundancy” at every opportunity, those claims cannot be accepted as true without a sufficient evidentiary foundation.

N.J.S.A. 52:14B-10(d) requires that a decision in a contested case shall be based only upon the evidence of the record. Given the record before it, the BPU must deny NJNG’s Petition regarding the SRL.

Respectfully submitted,



KATELYN M. McELMOYLE

KMM

cc: Service List  
Caryn Hoyer, RMC, Clerk of Chesterfield Township

**NEW JERSEY NATURAL GAS  
SERVICE LIST**

**NJNG**

John Valeri, Esquire  
Chiesa, Shahinian & Giantomasi, P.C.  
One Boland Drive  
West Orange, NJ 07052  
[jvaleri@csglaw.com](mailto:jvaleri@csglaw.com)

Jeffery S. Chiesa Esquire  
Chiesa, Shahinian & Giantomasi, P.C.  
One Boland Drive  
West Orange, NJ 07052  
[jchiesa@csglaw.com](mailto:jchiesa@csglaw.com)

Michael K. Plumb  
Chiesa, Shahinian & Giantomasi, P.C.  
One Boland Drive  
West Orange, NJ 07052  
[mplumb@csglaw.com](mailto:mplumb@csglaw.com)

Matthew Korkes  
Chiesa, Shahinian & Giantomasi, P.C.  
One Boland Drive  
West Orange, NJ 07052  
[Mkorkes@csglaw.com](mailto:Mkorkes@csglaw.com)

Andrew Dembia, Esquire  
New Jersey Natural Gas Company  
1415 Wycoff Road  
P.O. Box 1464  
Wall NJ 07719  
[adembia@njng.com](mailto:adembia@njng.com)

**BOARD OF PUBLIC UTILITIES**

Irene Kim Asbury, Secretary  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 351  
Trenton, NJ 08625-0350  
[Irene.asbury@bpu.state.nj.us](mailto:Irene.asbury@bpu.state.nj.us)

Jerome May, Director  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 351  
Trenton, NJ 08625-0350  
[Jerome.may@bpu.state.nj.us](mailto:Jerome.may@bpu.state.nj.us)

Robert Schultheis, Chief  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 351  
Trenton, NJ 08625-0350  
[robert.schultheis@bpu.state.nj.us](mailto:robert.schultheis@bpu.state.nj.us)

John Masiello  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 351  
Trenton, NJ 08625-0350  
[john.masiello@bpu.state.nj.us](mailto:john.masiello@bpu.state.nj.us)

James Giuliano  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 351  
Trenton, NJ 08625-0350  
[james.giuliano@bpu.state.nj.us](mailto:james.giuliano@bpu.state.nj.us)

Michael Stonack  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 351  
Trenton, NJ 08625-0350  
[michael.stonack@bpu.state.nj.us](mailto:michael.stonack@bpu.state.nj.us)

Craig Lynch  
New Jersey Natural Gas Company  
1415 Wycoff Road  
P.O. Box 1464  
Wall NJ 07719  
[clynch@njng.com](mailto:clynch@njng.com)

Eric Weaver  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[eric.weaver@bpu.state.nj.us](mailto:eric.weaver@bpu.state.nj.us)

Rachael Brekke  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[rachael.brekke@bpu.state.nj.us](mailto:rachael.brekke@bpu.state.nj.us)

Keith Sturn  
New Jersey Natural Gas Company  
1415 Wycoff Road  
P.O. Box 1464  
Wall NJ 07719  
[ksturn@njng.com](mailto:ksturn@njng.com)

Maureen Wagner, Esquire  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Maureen.wagner@bpu.state.nj.us](mailto:Maureen.wagner@bpu.state.nj.us)

Mariellen Dugan, Esquire  
New Jersey Natural Gas Company  
1415 Wycoff Road  
P.O. Box 1464  
Wall NJ 07719  
[Mdugan@njng.com](mailto:Mdugan@njng.com)

Megan Lupo, Esquire  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[megan.lupo@bpu.state.nj.us](mailto:megan.lupo@bpu.state.nj.us)

Mark R. Sperduto  
New Jersey Natural Gas Company  
1415 Wycoff Road  
P.O. Box 1464  
Wall NJ 07719  
[msperduto@njng.com](mailto:msperduto@njng.com)

Cynthia Covie, Chief Counsel  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Cynthia.covie@bpu.state.nj.us](mailto:Cynthia.covie@bpu.state.nj.us)

**DIVISION OF RATE COUNSEL**

Stefanie A. Brand, Director  
State of New Jersey  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-003  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Paul Flanagan, Executive Director  
NJ Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[Paul.flanagan@bpu.state.nj.us](mailto:Paul.flanagan@bpu.state.nj.us)

Felicia Thomas-Friel, Esquire  
State of New Jersey  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-003  
[fthomas@rpa.state.nj.us](mailto:fthomas@rpa.state.nj.us)

Brian O. Lipman, Litigation Manager  
State of New Jersey  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-003  
[blipman@rpa.state.nj.us](mailto:blipman@rpa.state.nj.us)  
Henry M. Ogden, Esquire  
State of New Jersey  
Division Of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-003  
[hogden@rpa.state.nj.us](mailto:hogden@rpa.state.nj.us)

Maura Caroselli, Esquire  
State of New Jersey  
Department of Law & Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[mcaroselli@rpa.state.nj.us](mailto:mcaroselli@rpa.state.nj.us)

**DAGs**

Caroline Vachier, Deputy Attorney General  
Section Chief  
State of New Jersey  
Department of Law and Public Safety  
Division of Law  
124 Halsey Street, P.O. Box 45029  
Newark, NJ 07101  
[Caroline.vachier@dol.lps.state.nj.us](mailto:Caroline.vachier@dol.lps.state.nj.us)

Alexis Moreau, DAG  
State of New Jersey  
Department of Law & Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[Alex.moreau@dol.lps.state.nj.us](mailto:Alex.moreau@dol.lps.state.nj.us)

Christopher Psihoules, DAG  
State of New Jersey  
Department of Law & Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
[Christopher.Psihoules@dol.lps.state.nj.us](mailto:Christopher.Psihoules@dol.lps.state.nj.us)

Babette Tenzer, DAG  
State of New Jersey  
Department of Law & Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
[Babette.tenzer@dol.lps.state.nj.us](mailto:Babette.tenzer@dol.lps.state.nj.us)

Geoffrey Gersten, DAG  
State of New Jersey  
Department of Law & Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
[geoffrey.gersten@dol.lps.state.nj.us](mailto:geoffrey.gersten@dol.lps.state.nj.us)



Shelly Massey  
State of New Jersey  
Department of Law & Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[Smassey@rpa.state.nj.us](mailto:Smassey@rpa.state.nj.us)

**BURLINGTON COUNTY OF CHOSEN  
FREEHOLDERS**

William R. Burns, Esquire  
Capehart & Scatchard, P.A.  
142 West State Street  
Trenton, NJ 08608  
[wburns@capehart.com](mailto:wburns@capehart.com)

**JOINT BASE McGUIRE-Dix- Lakehurst**

Alice Good, Chief, Environmental and Real  
Property Law  
2901 Falcon Lane  
Joint Base McGuire-Dix-Lakehurst, NJ 08641  
[alice.good@us.af.mil](mailto:alice.good@us.af.mil)

**COUNTY ADMINISTRATORS**

Paul Drayton, Jr.  
Burlington County Administrator  
49 Rancocas Road, Room 108  
Mount Holly, NJ 08060  
[clerkoftheBoard@co.burlington.nj.us](mailto:clerkoftheBoard@co.burlington.nj.us)

Carl Block  
Ocean County Administrator  
101 Hooper Avenue  
Toms River, NJ 08754-2191  
[cblock@co.ocean.nj.us](mailto:cblock@co.ocean.nj.us)

Terri O'Connor  
Monmouth County Administrator  
Hall of Records  
Freehold, NJ 07728  
[Teri.oconnor@co.monmouth.nj.us](mailto:Teri.oconnor@co.monmouth.nj.us)

**TOWNSHIP OF CHESTERFIELD**

Katelyn M. McElmoyl, Esquire  
Parker McCay, P.A.  
9000 Midlantic Drive  
Mount Laurel NJ 08054-5054  
[Kmcelmoyl@parkermccay.com](mailto:Kmcelmoyl@parkermccay.com)

John C. Gillespie, Esquire  
Parker McCay, P.A.  
9000 Midlantic Drive  
Mount Laurel NJ 08054-5054  
[Jgillespie@parkermccay.com](mailto:Jgillespie@parkermccay.com)

**TOWNSHIP OF UPPER FREEHOLD**

Dennis A. Collins, Esquire  
Collins, Vella & Casello, LLC  
2317 Highway 34, Suite 1A  
Manasquan, NJ 08736  
[dcollins@cvclaw.net](mailto:dcollins@cvclaw.net)

**MUNICIPAL CLERKS**

Cindy Dye  
North Hanover Township Clerk  
41 Schoolhouse rd.  
Jacobstown, NJ 08562  
[clerk@northhanovertwp.com](mailto:clerk@northhanovertwp.com)  
Dana Tyler  
Upper Freehold Township Clerk  
314 Route 539  
Cream Ridge, NJ 08514  
[Dtyler@uftnj.com](mailto:Dtyler@uftnj.com)

**State Agriculture Development Committee  
(SADC)**

Steven Bruder, PP  
State Agriculture Development Committee  
369 S. Warren St.  
P.O. Box 330  
Trenton, NJ 08625-0330  
[Steven.Bruder@ag.state.nj.us](mailto:Steven.Bruder@ag.state.nj.us)

**PINELANDS PRESERVATION ALLIANCE**

Todd Parisi, Esquire  
Law Offices of Paul Leodori, P.C.  
The Haines Building  
61 Union Street, 2nd Floor  
Medford, NJ 08055  
[Todd@leodori.com](mailto:Todd@leodori.com)

**TOWNSHIP OF PLUMSTED**

Denis R. Kelly, Esquire  
Gilmore & Monahan  
Allen Street Professional Center  
Ten Allen Street, Box 1540  
Toms River, NJ 08754  
[dpk@gm-law.net](mailto:dpk@gm-law.net)

**ATTORNEYS FOR INTERVENOR:  
NORTH HANOVER TOWNSHIP**

Mark Roselli, Esquire  
Roselli, Griegel, Lozier & Lazzaro, PC  
1337 Highway 33  
Hamilton, NJ 08690  
[mroselli@roselligriegel.com](mailto:mroselli@roselligriegel.com)

Dorothy Henderickson, RMC  
Plumstead Township Clerk  
121 Evergreen Road  
New Egypt, NJ 080533  
[municipalclerk@plumsted.org](mailto:municipalclerk@plumsted.org)

Anna Marie Eden, RMC  
Jackson Township Clerk  
95 West Veterans Highway  
Jackson, NJ 08527  
[Clerk@jacksontwpnj.net](mailto:Clerk@jacksontwpnj.net)

Sabina T. Skibo, RMC, CMR, CPM  
Manchester Township Clerk  
1 Colonial Drive  
Manchester, NJ 08759  
[clerk@manchestertwp.com](mailto:clerk@manchestertwp.com)

File No. 14965-0182-JCG

**Law Offices**

**PARKER McCAY P.A.**

**By: Katelyn M. McElmoyl, Esquire**

**Attorney ID # 019402012**

**9000 Midlantic Drive, Suite 300**

**P.O. Box 5054**

**Mount Laurel, New Jersey 08054-5054**

**(856) 596-8900**

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE PETITION  
OF NEW JERSEY NATURAL GAS  
COMPANY FOR DETERMINATION  
CONCERNING THE SOUTHERN  
RELIABILITY LINK PURSUANT TO  
N.J.S.A. 40:55D-19 AND N.J.S.A. 48:9-25.4**

**DOCKET NO.: GO15040403**

**Certification of Service for Letter  
Brief in Response to New Jersey  
Natural Gas' Initial Post-Hearing  
Brief**

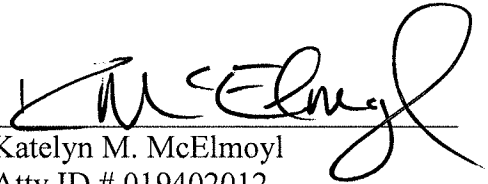
**CERTIFICATION OF SERVICE**

I, KATELYN M. McELMOYL, of full age, hereby certifies and states:

1. I am an attorney-at-law of the State of New Jersey and a member of the Law Firm Parker McCay P.A., attorneys for the Township of Chesterfield in this matter.
2. On today's date, I caused to be filed via hand-delivery to Irene Kim Asbury, Secretary, State of New Jersey, Board of Public Utilities, 44 South Clinton Avenue, Trenton, New Jersey 08625, the original Letter brief in Response to New Jersey Natural Gas' Initial Post-Hearing Brief

3. On today's date, I caused copies of the document listed above in paragraph 2 to be served via e-mail on all parties and counsel on the attached service list, pursuant to Commissioner Solomon's Order dated June 18, 2015.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Katelyn M. McElmoyl  
Atty ID # 019402012  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laurel, New Jersey 08054  
(856) 596-8900

Dated: January 29, 2016