



# **RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION**

**NO. PC4-17-\_\_\_\_\_**

**TITLE:** **Approving With Conditions Pinelands Development Application Number 2014-0045.001**

**Commissioner \_\_\_\_\_ moves and Commissioner \_\_\_\_\_**  
**seconds the motion that:**

**WHEREAS**, the following application was remanded to the Pinelands Commission to determine whether it conforms with the standards of the Pinelands Comprehensive Management Plan:

**2014-0045.001**

|                              |                                                                                                                    |
|------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>Applicant:</b>            | <b>New Jersey Natural Gas</b>                                                                                      |
| <b>Municipality:</b>         | Jackson Township<br>Manchester Township<br>Plumsted Township                                                       |
| <b>Management Area:</b>      | Pinelands Military/Federal Installation Area<br>Pinelands Regional Growth Area<br>Pinelands Rural Development Area |
| <b>Date of Report:</b>       | August 29, 2017                                                                                                    |
| <b>Proposed Development:</b> | Installation of 12.1 miles of 30 inch natural gas main within Ocean County Route 539 & 547 rights-of-way.          |

**WHEREAS**, in response to the Appellate Division's remand, the Pinelands Commission passed Pinelands Resolution No. PC4-17-10 on June 9, 2017, setting forth the process it would utilize to review the application; and

**WHEREAS**, in accordance with Pinelands Resolution No. PC4-17-10, the Pinelands Commission accepted verbal comments at its July 26, 2017 Special Commission meeting and accepted written comments until August 2, 2017; and

**WHEREAS**, the Pinelands Commission has had the opportunity to review the public comments submitted, the record and the Executive Director's Recommendation Report dated August 29, 2017; and

**WHEREAS**, the Pinelands Commission hereby finds that there is ample evidence in the record that demonstrates that the proposed development with the conditions recommended by the Executive Director conforms to the minimum standards of the Pinelands Comprehensive Management Plan; and

**WHEREAS**, the Pinelands Commission hereby finds that the proposed development with the conditions recommended by the Executive Director is consistent with the intent and objectives of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and the Pinelands Comprehensive Management Plan, N.J. A.C. 7:50; and

**WHEREAS**, pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval.

**NOW, THEREFORE BE IT RESOLVED** that the Pinelands Commission **Adopts** the recommendation of the Executive Director including the conditions contained within the Executive Director's Recommendation Report dated August 29, 2017; and

**BE IT FURTHER RESOLVED** that the Pinelands Commission hereby **determines** that the development proposed in the Pinelands Development Application No. 2014-0045.001 is **consistent** with the minimum standards of the Pinelands Comprehensive Management Plan.

**Record of Commission Votes**

|        | AYE | NAY | NP | A/R* |            | AYE | NAY | NP | A/R* |             | AYE | NAY | NP | A/R* |
|--------|-----|-----|----|------|------------|-----|-----|----|------|-------------|-----|-----|----|------|
| Ashmun |     |     |    |      | Galletta   |     |     |    |      | Prickett    |     |     |    |      |
| Avery  |     |     |    |      | Jannarone  |     |     |    |      | Quinn       |     |     |    |      |
| Barr   |     |     |    |      | Lloyd      |     |     |    |      | Rohan Green |     |     |    |      |
| Brown  |     |     |    |      | Lohbauer   |     |     |    |      | Earlen      |     |     |    |      |
| Chila  |     |     |    |      | McGlinchey |     |     |    |      |             |     |     |    |      |

\* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: \_\_\_\_\_

---

Nancy Wittenberg  
Executive Director

---

Sean W. Earlen  
Chairman



State of New Jersey  
 THE PINELANDS COMMISSION  
 PO Box 359  
 NEW LISBON, NJ 08064  
 (609) 894-7300  
 www.nj.gov/pinelands



Chris Christie  
 Governor  
 Kim Guadagno  
 Lt. Governor

General Information: Info@njpines.state.nj.us  
 Application Specific Information: AppInfo@njpines.state.nj.us

Sean W. Earlen  
 Chairman  
 Nancy Wittenberg  
 Executive Director

**EXECUTIVE DIRECTOR’S RECOMMENDATION REPORT**

August 29, 2017

Application No.: 2014-0045.001

Location: County Routes 539 & 547  
 Block 23601, Lot 1  
 Jackson Township  
 Block 70, Lot 18; Block 71, Lot 13; Block 72.01, Lot 14.03 & Block 200,  
 Lot 2  
 Manchester Township  
 Block 76, Lots 82.02 & 83.01; Block 91, Lot 1 & Block 92, Lot 1  
 Plumsted Township

This application proposes the installation of a 12.1-mile portion of an approximately 30-mile, 30-inch, high pressure natural gas transmission pipeline that runs through the Townships of Chesterfield and North Hanover in Burlington County; the Township of Upper Freehold in Monmouth County; and the Townships of Plumsted, Jackson and Manchester in Ocean County. Only 12.1 miles of this natural gas pipeline is proposed to be constructed within the Pinelands Area and is the only part of the pipeline subject to the Commission’s regulatory authority. Therefore, only the 12.1 mile portion of the proposed natural gas pipeline project is discussed in this report.

The portion of the proposed natural gas pipeline to be constructed in the Pinelands Area will be located almost entirely within existing rights-of-way and roads. Specifically, the proposed pipeline will enter the Pinelands Area in Plumsted Township within Pinehurst Road (CR 539) and will continue into Jackson Township along Pinehurst Road (CR 539), which turns into Whiting-New Egypt Road (CR 539). Just before the border between Jackson and Manchester Townships, the pipeline will turn east into the fenced portion of Joint Base McGuire-Dix-Lakehurst (JB-MDL or the “Base) and follows the Base’s southern fence line along access roads, East Boundary Road, East Clubhouse Lake Road, Lakehurst Naval Air Center Taxiway, Broome Road, Lakehurst Naval Air Center Access Road and Lakehurst-Whitesville Road, before exiting the Base along County Road 547. The proposed natural gas pipeline will then cross CR 547, continue through several easements through private properties, at which point it leaves the Pinelands and follows Lowell Road and NJ State Route 70 before terminating by tying into NJNG’s existing transmission system south of Route 70 in Manchester. The proposed natural gas pipeline will be located within three Pinelands Management Areas; a Rural Development Area

(1.42 miles), a Military and Federal Installation Area (10.45 miles) and a Regional Growth Area (0.21 miles).

As held by the Board of Public Utilities (BPU) in its January 27, 2016 Reliability & Security Order, the entire length of the proposed natural gas pipeline is intended to provide adequate supply and reliability (i.e. redundancy) to the southern portion of New Jersey Natural Gas (NJNG) Company's service territory, which includes JB-MDL, by interconnecting the proposed pipeline with NJNG's existing 24-inch transmission line located on Colonial Drive in Manchester Township. As confirmed by JB-MDL, NJNG currently maintains a gas distribution system throughout the Lakehurst part of JB-MDL that serves a majority of its buildings and facilities. This existing natural gas distribution system begins near the Base's entrance on County Route 547 and extends west to the National Guard Center on County Route 539.

### **BACKGROUND**

NJNG is a gas public utility, regulated by the BPU pursuant to NJSA 48:2-23, that supplies natural gas to customers in Morris, Middlesex, Monmouth, Ocean and Burlington Counties. NJNG differs from the other natural gas utilities in New Jersey in that no interstate pipelines run through its primary service territory located in Monmouth and Ocean Counties. As a result, NJNG provides natural gas to its customers in these counties, through its own network of transmission pipelines, that receive natural gas supply from two existing interstate natural gas supply mains, (Texas Eastern Transmission, LP (TETCO) and Transcontinental Gas Pipeline Co. (Transco)), both of which are located to the north and west of these counties. Currently, over 85% of NJNG's winter season peak day gas supply is provided by a single interstate pipeline, i.e. the TETCO line. The remaining 15% is provided by the two smaller connections to the Transco line located in Sayreville and Morgan, New Jersey.

On April 10, 2015, NJNG submitted a Pinelands Development Application to the Pinelands Commission for the installation of a 12.1-mile, 30-inch natural gas transmission pipeline within the Pinelands Area in Jackson, Plumsted and Manchester Townships, all in Ocean County. The proposed pipeline constitutes a portion of an overall 30-mile, 30-inch pipeline project known as the Southern Reliability Link (SRL)<sup>1</sup>. The SRL is intended to provide redundancy and resiliency by providing connections to two separate interstate natural gas mains, one located at each end of NJNG's system<sup>2</sup>.

Prior to submitting its application, NJNG, in accordance with N.J.A.C. 7:50-4.2(a), requested two pre-application conferences with the Pinelands Commission staff, which occurred on May 6, 2014 and October 14, 2014, respectively. The purpose of these pre-application conferences was to discuss the proposed project and the applicable standards of the Pinelands Comprehensive Management Plan (CMP) to which such project was subject. Pre-application conferences are

---

<sup>1</sup> NJNG submitted petitions to the BPU on April 2, 2015 and amended petitions on June 5, 2015, seeking to have BPU authorize construction and operation of the Southern Reliability Link pursuant to N.J.A.C. 14:7-1.4. Additionally, NJNG also petitioned BPU for preemption of municipal review of the proposed project pursuant to N.J.S.A. 40:55D-19 and to have it designate the route of the proposed pipeline in accordance with N.J.S.A. 48:9-25.4

<sup>2</sup> "[T]he Board finds that the project [the SRL] will ... add a significant, diverse source of natural gas, while also increasing overall system reliability and reinforcement in NJNG's service area." BPU Energy Decision and Order, Docket No. GO15040403, dated March 18, 2016 at 40.

informal meetings intended to facilitate open consideration of development proposals and the views and concerns of the applicant and the Commission. N.J.A.C. 7:50-4.2(a)3

Because NJNG is a private entity, Commission staff review normally would have proceeded in accordance with the regulatory process for private development. Specifically, once the application was deemed complete in accordance with N.J.A.C. 7:50-4.2(c), staff would have issued a Certificate of Filing (COF) in accordance with N.J.A.C. 7:50-4.34. Although not an approval, the COF authorizes a local permitting agency (municipality or county) to begin its review of the proposed development. *Id.* In addition, once the local permitting agency issues its approval for the private development, that approval must be submitted to the Commission's Executive Director for a determination as to whether it raises a substantial issue with respect to its conformance with the CMP. Only if the Executive Director finds that the local approval raises a substantial issue, does the application go before the full Commission for a vote, following the development of the record before the Executive Director or the OAL. N.J.A.C. 7:50-4.37 & 4.42.<sup>3</sup>

However, in this matter, NJNG petitioned the BPU pursuant to N.J.S.A 40:55D-19 to preempt municipal review of its proposed natural gas pipeline project. Accordingly, the application was reviewed under the coordinated state agency permitting provisions of the CMP at N.J.A.C. 7:50-4.81 through 4.85, which required the Executive Director to issue a COF to the applicant for submission to the BPU.

On December 9, 2015, the Commission staff issued a COF for the application pursuant to N.J.A.C. 7:50-4.34 and 4.82. Commission staff reviewed the proposed natural gas pipeline project for compliance with all applicable CMP standards, specifically permitted land uses, wetlands, threatened or endangered plants and wildlife, stormwater, and cultural resources. The staff determined that the proposed natural gas pipeline project was consistent with all of these standards. In the COF, however, it identified two CMP standards (wetlands and permitted land use) for which it provided guidance. Specifically, because of wetland impacts associated with the proposed natural gas pipeline, staff included a condition within the COF that the applicant obtain freshwater wetlands permits from the NJDEP prior to commencing development that would result in the disturbance of any wetlands area. Likewise, staff provided guidance as to why the proposed natural gas pipeline project was consistent with the CMP's permitted use standards. Additionally, although not a CMP compliance issue<sup>4</sup>, the staff identified the on-going site remediation activities occurring along the proposed route, to ensure that, prior to the commencement of any construction, the United States Environmental Protection Agency or the New Jersey Department of Environmental Protection determined that the proposed development would not affect these activities.

---

<sup>3</sup> If the Executive Director determines the local approval does not raise issue of CMP conformance, the approval may go into effect. However, if further review ("call-up") is necessary, an adjudicatory hearing is conducted by either the Executive Director or the Office of Administrative Law, followed by a vote of the Commission. Conversely, with regard to public development applications, which typically do not include a corresponding local permitting approval, the determination of CMP compliance is made by vote of the Commission.

<sup>4</sup> In accordance with a Memorandum of Agreement between the New Jersey Department of Environmental Protection and the New Jersey Pinelands Commission dated October 1994, the New Jersey Department of Environmental Protection is the lead agency and acts as the Commission's agent with regard to site remediation activities conducted in the Pinelands Area, including site remediations conducted under the Comprehensive Environmental, Response, Compensation and Liability Act, pursuant to which the United States Environmental Protection Agency is acting as the lead agency.

By letter dated February 4, 2016, the Executive Director transmitted a copy of the COF to the BPU. In that letter, the Executive Director requested that BPU provide the Commission with copies of documents issued and filed with BPU as part of its N.J.S.A. 40:55D-19 (Municipal Land Use Law preemption) petition proceedings, including copies of the petition; notice of any hearing, public meetings or other formal proceedings pertaining to that petition; copies of any written reports or comments that the BPU may receive that raise issues concerning the standards of the CMP and copies of any draft orders. BPU subsequently submitted its record to the Commission staff, including all public comments and documents submitted as part of its public and evidentiary hearings. After reviewing these materials, the Executive Director sent a letter to BPU, on March 10, 2016, indicating that based on the Commission staff's expertise and experience in administering the CMP and its review of the record, the finding of CMP consistency contained within the December 9, 2015 COF remained valid.

On April 21, 2016 and April 28, 2016, the Sierra Club and the Pinelands Preservation Alliance, respectively, each filed a Notice of Appeal of the Executive Director's March 10, 2016 letter.

On November 7, 2016, the Appellate Division, in three unrelated, consolidated appeals involving a petition to the BPU for municipal preemption pursuant to N.J.S.A. 40:55D-19 submitted by the South Jersey Gas Company, issued a published decision remanding that application to the Commission for its review of the Executive Director's consistency determination on that application and for further proceedings in conformity with its decision. In re petition of South Jersey Gas Company, 447 N.J. Super. 459 (App. Div., November 7, 2016). The decision afforded the Commission wide discretion in what procedures it chose to undertake such review provided the Commission afforded the public notice and the opportunity to be heard before it rendered its final decision. *Id.* at 479.

Given the Appellate Division's decision in the South Jersey Gas appeals and that the same review process was used for both the NJNG and the South Jersey Gas applications, the Commission determined that it should seek to have the NJNG appeals remanded so that it could conduct a review of the staff's consistency determination consistent with the Appellate Division's decision in In re: South Jersey Gas. Consequently, at its December 9, 2016 meeting, the Commission passed Resolution PC4-16-43. This resolution authorized the Division of Law to file motions in the Appellate Division to have the two appeals related to the Commission's consideration of the NJNG's proposed pipeline project remanded. On January 10, 2017, motions to remand the two appeals related to the NJNG application were filed with the Appellate Division.

Both the Sierra Club and the Pinelands Preservation Alliance filed responses to the Commission's remand motions on January 19, 2017. The Sierra Club concurred in this remand, but asked that the Appellate Division order an evidentiary hearing on remand. The Pinelands Preservation Alliance, however, also filed a Cross Motion to Invalidate Resolution PC4-16-42, Amend the Comprehensive Management Plan in Compliance with the Administrative Procedure Act and Provide a Hearing.

By Order dated January 31, 2017, the Appellate Division granted the Commission's remand motion, without ordering an evidentiary hearing, and dismissed the Sierra Club's appeal. In addition, as was the case with the South Jersey Gas application, the Appellate Division directed the Commission, on remand, to determine whether to render its decision based on the record developed before the BPU or to allow the parties to present additional evidence. The Appellate

Division ordered the Pinelands Commission, to also determine whether to refer the matter to the Office of Administrative Law for an evidentiary hearing before an Administrative Law Judge.

Likewise, on February 15, 2017, the Appellate Division issued an order granting the Commission's remand motion and denying the Pinelands Preservation Alliance's cross motion and motion to amend.

On May 11, 2017, the Executive Director received a letter from Kevin Marino, Marino, Tortorella & Boyle, counsel for New Jersey Natural Gas with respect to the Southern Reliability Link, requesting that the Commission review the Executive Director's prior determination, "without further delay." Mr. Marino stated that not only would this delay raise specific legal issues, it would also "unduly and improperly delay the SRL project..." Further, Mr. Marino explained that a delay "could have devastating consequences" with regard to the ability of NJNG to supply gas to its customers.

At its June 9, 2017 meeting, the Commission unanimously passed Resolution PC4-17-10, detailing the review process that would be followed to implement the Appellate Division's remand instructions and govern its review of the NJNG application. Additionally, in accordance with the Appellate Division's January 31, 2017 Order, the Commission, in that resolution: 1) determined that it would rely on the record developed before the BPU; 2) decided not to refer the matter to the Office of Administrative Law, because an additional evidentiary hearing was not necessary at this time given the limited regulatory issues involved in the application and the extensive record already developed both as part of the Commission's review of the application and the public and evidentiary hearings conducted before the BPU; and 3) permitted the former appellants to submit any additional information that they wished as part of the public comment process.

Following that meeting, the Commission posted notice on its website that the public would have the opportunity to provide oral comment regarding the NJNG application at a special Commission meeting that would be held on July 26, 2017 and through submission of written comments until the close of business on August 2, 2017<sup>5</sup>.

The July 26, 2017 meeting was conducted at the Pine Belt Arena in Toms River, New Jersey. The Pine Belt Arena is located approximately 9 miles from the proposed portion of the NJNG natural gas transmission pipeline subject to the Commission's jurisdiction. During this meeting, the Commission received public comment on the NJNG natural gas pipeline from 45 individuals over approximately 4 hours. Additionally, the Commission received 1,319 written comments on the application prior to the August 2, 2015 close of the written comment period.

## **STANDARDS**

The Commission staff has reviewed the proposed development for consistency with all applicable standards of the Pinelands Comprehensive Management Plan (CMP). The following reviews the CMP standards that are relevant to this application:

---

<sup>5</sup> Notice of the public's opportunity to comment was provided to the Asbury Park Press, Press of Atlantic City, Burlington County Times and the Cherry Hill Courier on June 12, 2017. Moreover, the Commission provided newspaper notice of its July 26, 2017 Special Meeting to the same newspapers on June 20, 2017.

Land Use (N.J.A.C. 7:50-5.28(a), 7:50-5.26(b)10 and 7:50-5.29(a))

As indicated in the Commission's December 9, 2015 Certificate of Filing for this application, the portion of the project to be constructed within the Pinelands Area consists of 12.1 miles of a 30-inch, high pressure natural gas transmission pipeline, which is proposed to be constructed almost entirely within existing rights-of-way and roads located in Plumsted, Jackson and Manchester Townships.

The proposed natural gas pipeline will be located in a Rural Development Area (1.42 miles), a Military and Federal Installation Area (10.45 miles) and a Regional Growth Area (0.21 miles). The CMP defines a natural gas pipeline as "public service infrastructure" N.J.A.C. 7:50-2.11. Public service infrastructure is a permitted use<sup>6</sup> in a Regional Growth Area (N.J.A.C. 7:50-5.28(a)) and a Rural Development Area (N.J.A.C. 7:50-5.26(b)10).

Public service infrastructure is also a permitted use in a Military and Federal Installation Area provided the development meets certain conditions. N.J.A.C. 7:50-5.29. In fact, any use associated with the function of the Federal Installation may be permitted in a Military and Federal Installation Area, provided that: 1) where feasible, development shall be located in that portion of the installation located within the Pinelands Protection Area; and 2) the use shall not require development, including public service infrastructure, in the Preservation Area District or in a Forest Area. N.J.A.C. 7:50-5.29(a).

NJNG currently maintains a natural gas distribution system within the Lakehurst section of JB-MDL that serves a majority of its buildings and facilities. NJNG's proposed new natural gas pipeline will enter JB-MDL in Plumsted along Route 539. Just before the border between Jackson and Manchester Townships, it turns east into the fenced portion of the Base. It then traverses the Base's southern fence line along various access roads until it exits the Lakehurst section of JB-MDL at County Road 547, where it will continue and connect with NJNG's existing 24-inch transmission line located on Colonial Drive in Manchester Township. The proposed natural gas pipeline thus provides redundancy and resiliency to the Lakehurst section of JB-MDL by providing a direct connection to a second interstate transmission main at the southern end of NJNG's territory. Consequently, should NJNG experience a disruption in its existing TETCO interconnection in Jamesburg, New Jersey, it would be able to use this new connection to Transco, in Chesterfield Township, to provide gas to the Lakehurst section of JB-MDL through the existing natural gas distribution system already located on that section of the Base.

This need for redundancy is confirmed in a November 6, 2015 letter from the former Commander of JB-MDL, Colonel Fredrick D. Thaden, to Assemblyman Ronald S. Dancer wherein he stated "Gas supply to the eastern portion of JB-MDL was identified as a critical system deficiency in the aftermath of Hurricane Sandy. This project provides a primary benefit of natural gas redundancy gained by looping the delivery pipeline, in addition to potentially converting facilities from liquid energy sources to gas. The current proposed route will provide direct service to the installation whereas, under the current state, JB-MDL is near the terminus of the existing pipeline." Colonel Thaden made a similar statement in a November 7, 2015 letter to

---

<sup>6</sup> A permitted use is a land use authorized by the CMP in a particular Pinelands management area pursuant to Subchapter 5, Minimum Standards for Land Uses and Intensities.



Executive Director Nancy Wittenberg wherein he acknowledged that the proposed natural gas pipeline addresses a known natural gas deficiency on JB-MDL and assures the Base's ability to address national security requirements by providing energy resiliency and redundancy.

Similarly, both the Base Commander before Colonel Thaden (Colonel James C. Hodges) and the present Base Commander (Colonel Neil R. Richardson) have confirmed that the proposed natural gas pipeline project is associated with the function of JB-MDL. Specifically, Colonel Hodges, in a letter dated February 13, 2015 to a concerned citizen stated "[The Base's] interest in this important project is the improvement of energy reliability and redundancy at the Joint Base" and that "any disruption in service adversely impacts the installation." Colonel Hodges went on to state "[e]nergy reliability and redundancy at this installation is absolutely critical to our local, regional, national and international missions. A recent example of the combination of these issues was our response to Superstorm Sandy where the Joint Base provided crucial emergency and logistical support to the local area and region. However, our natural gas supply was at critically low levels after the storm and increased the risk to our ability to support the recovery and other ongoing missions."

Likewise, the current Base Commander Neil R. Richardson, in comments emailed to Nancy Wittenberg dated August 2, 2017, stated "[t]he Southern Reliability Link project, as proposed by New Jersey Natural Gas, is an initiative that supports the Department of Defense and Air Force goals of increasing energy security, providing assurance that a critical energy source is available without interruption. Hurricane Irene and Superstorm Sandy provided an excellent, albeit unwelcome opportunity to assess our vulnerability to interruptions in energy supply due to natural or manmade events. Colonel Richardson also stated that "[t]he Southern Reliability link project provides an alternative source of gas in the event the current one is compromised. Any loss of gas supply will cripple the missions carried out by Naval Air Systems Command, which are Fleet Support functions critical to national security. Other organizations reliant upon that energy source are the Army Communication-Electronic Research, Development and Engineering Center, the New Jersey National Guard Aviation and Logistics Training functions, as well as the FBI and state police. The Southern Reliability Link provides redundancy in our gas supply and reduces the risk of degradation or failure of our core missions."

Thus, NJNG's proposed natural gas pipeline is clearly associated with the function of the Base. Although each used different words, all three commanders acknowledged that the proposed natural gas project provides a redundant natural gas supply to the Base and that the Base uses natural gas as part of its various missions. Additionally, all three commanders identified a real life incident, the aftermath of Superstorm Sandy, where the Base's existing natural gas supply was critically low and discussed the impact that loss of natural gas would have to the Base and its on-going missions. As demonstrated by these letters, NJNG's proposed natural gas pipeline provides redundancy to JB-MDL by providing an alternate natural gas supply from the SRL's interconnection with NJNG's existing transmission line located on Colonial Drive in Manchester Township. In contrast, under the current state, JB-MDL is near the terminus of the existing pipeline. As discussed by BPU in its March 18, 2016, Energy Order, Dkt. No. G01504040403, any supply disruption in the TETCO interconnection, that outstrips the capacity of the existing Transco interconnections and NJNG's existing LNG facilities' ability to maintain adequate system pressure, will result in the loss of service to customers in the southern portion of NJG's service territory. *Id.* at 39.

N.J.A.C. 7:50-5.29(a)1 requires that where feasible, development shall be located in that portion of the installation located within the Pinelands Protection Area. The portion of NJNG's proposed natural gas pipeline project located within the Base is located entirely within the Preservation Area of the Pinelands<sup>7</sup>. The CMP, however, does not prohibit development within the Preservation Area. Rather, it requires that if it is feasible, such development must be constructed in the Protection Area. If that is infeasible, development may occur in the Preservation Area<sup>8</sup>.

As part of its review of NJNG's municipal preemption petition pursuant to N.J.S.A. 40:55D-19, the BPU examined alternative routes for the SRL pipeline project. In its March 18, 2016 Energy Order, the Board discussed one route that would have traversed the Base from State Route 68. BPU noted that this route would present undesirable operational impacts to JB-MDL<sup>9</sup>. *Id.* at 41. BPU also cited Burlington County's acknowledgement that the Joint Base has informed Assemblyman Dancer that this alternative presents numerous impacts to operational requirements of the Joint Base and that, as a result, Burlington County was unable to present any other viable routes. *Id.* Thus, BPU found that the record reflected evidence of review and analysis of alternate routes and that the NJNG's proposed route was the most appropriate. *Id.* at 42.

The November 6, 2017 letter from former Commander Colonel Fredrick D. Thaden to Assemblyman Dancer, cited by BPU, advised the Assemblyman that the route proposed by NJNG, that crosses portions of JB-MDL from Ocean County Route 539 through the southern edge of the former Lakehurst Naval Air Station, was developed in close coordination with Air Force Engineering, environmental and legal experts. Colonel Thaden also advised that this "is the best on-base route available because it presents minimal impact to our [JB-MDL's] mission, the people working and residing on JB-MDL and to the environment." Colonel Thaden's letter recounted the alternative on-base route considered, including an entrance point for the pipeline in proximity to the JB-MDL Route 68 gate near Wrightstown and concluded that "[b]ringing the pipeline from this area, across the installation to the Lakehurst side presents numerous impacts to operational requirements.... Moreover, a route from the east side to the west side of the installation [i.e. from the protection area], would have to transverse the range complex"; an area that has the potential for encountering unexploded ordinance.

Additionally, JB-MDL, in the March 2017 Draft Environmental Assessment for the easement for the proposed NJNG natural gas pipeline project, discussed two other areas that were considered as alternative easement locations, one of which traversed the Protection Area. The screening criteria used to evaluate these potential locations included avoiding areas used for military

---

<sup>7</sup> Two thirds of JB-MDL is located within the Preservation Area as delineated in the Pinelands Protection Act at N.J.S.A. 13:18A-11.b. The dividing line between the Preservation Area and the Protection Area is Cookstown-Browns Mills Road (CR 667), with the Protection Area to the west of the road and the Preservation Area to the east. Thus, the entire Lakehurst section of JB-MDL is located within the Preservation Area.

<sup>8</sup> The Preservation Area however, is not the same as the Preservation Area District. The terms Preservation Area and Protection Area refer to those portions of the Pinelands Area expressly delineated by the Pinelands Protection Act, N.J.S.A. 13:18A-1 *et seq.*; the boundaries of the Preservation Area are delineated in N.J.S.A. 13:18A-11.b and the Protection Area is defined by the Act as that portion of the Pinelands Area not included within the Preservation Area. N.J.S.A. 13:18A-3.j-k. The term Preservation Area District refers to a Pinelands Management Area designation found at N.J.A.C. 7:50-5.12(a)1. It is separate from the Military and Federal Installation Area designation found at N.J.A.C. 7:50-5.12(a)8.

<sup>9</sup> Likewise, BPU, in its January 27, 2016 Reliability & Security Order, stated "[t]he additional primary alternative routes also included routes which would travel through the Joint Base but were ultimately determined to be unviable by Joint Base management as they would cross the operational areas of McGuire Air Force Base as well as the artillery/firing ranges in Fort Dix." Dkt. No. GE15040402, p.8.

training and operations and areas where unexploded ordinance sweeps would be required. Specific examples of military training and operations that eliminated potential pipeline easement locations listed in the EA included aircraft hangars, hazardous materials storage areas, jet engine fuel storage tanks, munitions storage, live fire ranges and military housing units. In addition, JB-MDL excluded any locations that would not meet the CMP standard at N.J.A.C. 7:50-5.29(a)2, that prohibits construction of a proposed pipeline within the Preservation Area District or in a Forest Area.

The review of alternate on-base routes by JB-MDL validates that construction of NJNG's proposed natural gas pipeline in the Protection Area is infeasible. The proposed project, therefore, is consistent with N.J.A.C. 7:50-5.29(a)1.

As noted above, N.J.A.C. 7:50-5.29(a)2 provides that permitted uses in the Military and Federal Installation Area shall not require development, including public service infrastructure in the Preservation Area District or in a Forest Area. The Preservation Area District and Forest Areas, similar to the Military and Federal Installation Areas, are separate land use management area designations included in the CMP. N.J.A.C. 7:50-5.12(a)1 (Preservation Area District), -5.12(a)2 (Forest Areas) and 5.12(a)8 (Military and Federal Installation). They are geographically discrete areas, meaning that the Preservation Area District and Forest Areas are located entirely outside of the Military and Federal Installation Area. These management area designations are assigned specific land uses and development intensities by Subchapter 5 of the CMP. N.J.A.C. 7:50-5.21-5.36.

Any alternative that would have placed the proposed natural gas pipeline in the portion of JB-MDL located in the Protection Area also would have required development in the Preservation Area District or a Forest Area, which is expressly prohibited by 7:50-5.29(a)2. This also rendered construction of NJNG's proposed natural gas pipeline in the Protection Area infeasible.

NJNG's proposed natural gas pipeline does not include any development within the Preservation Area District or a Forest Area. Given this, the proposed pipeline project is consistent with N.J.A.C. 7:50-5.29(a)2. Thus, the record demonstrates that NJNG's proposed natural gas pipeline is a permitted use in a Military and Federal Installation Area, i.e. JB-MDL.

#### Wetlands Protection Standards (N.J.A.C. 7:50-6.7 & 6.13)

The CMP prohibits most development in wetlands and requires a 300 foot buffer to wetlands unless it is demonstrated that a lesser buffer will not result in a significant adverse impact to the wetland. NJNG's proposed natural gas pipeline project is to be constructed almost entirely within existing rights-of-way and roads. There is one point, however, on JB-MDL, where the proposed natural gas pipeline exits an existing roadway and crosses portions of an upland forest and wetland before it exits the Base along County Road 547.

Portions of these rights-of-way or roads are located within 300 feet of wetlands. However, in all of these areas, the proposed pipeline will be constructed under existing road pavement or, in the vicinity of Lakehurst Naval Air Center Taxiway, under existing, adjacent already disturbed and maintained grass shoulders. To the extent that the proposed natural gas pipeline will be installed under existing road pavement or disturbed and maintained grass shoulders, it will not result in a significant adverse impact on wetlands.

With regard to the one proposed wetlands crossing, the CMP (N.J.A.C. 7:50-6.13) permits the installation of utility transmission and distribution facilities in wetlands provided the following conditions are met: 1) there is no feasible alternative route for the linear improvement that does not involve development in a wetland, or, if none, that another feasible route which results in less significant adverse impacts on wetlands does not exist; 2) the need for the proposed linear improvement cannot be met by existing facilities or modification thereof; 3) the use represents a need which overrides the importance of protecting the wetland; 4) development of the linear improvement will include all practical measures to mitigate the adverse impact on the wetland; and 5) the resources of the Pinelands will not be substantially impaired as a result of the facility and its development as determined exclusively based on the existence of special and unusual circumstances.

The proposed natural gas pipeline will be installed under the wetland by HDD. The proposed crossing, however, would result in the permanent removal of 0.42 acres of upland trees (predominately pitch pines) and the disturbance of 390.3 sq. ft. (.009 acres) of forested wetlands. The 390.3 square feet of wetland disturbance is necessary to provide for ongoing operation and maintenance of the natural gas pipeline as it is not located under or adjacent to a road. After construction, the 390.3 square feet of forested wetland will be an emergent wetland.

The information submitted as part of NJNG's Pinelands Development Application, which was verified by the Commission staff, demonstrates compliance with the 5 conditions of N.J.A.C. 7:50-6.13. Specifically, based upon the staff's review, there is no feasible alternative route for the proposed natural gas pipeline that does not involve development in wetlands or another feasible route which results in an impact to less than 390.3 square feet of wetlands. The proposed pipeline will provide a second redundant supply of natural gas; the need for which cannot be met by existing facilities or modifications thereof. The provision of a second redundant supply of natural gas represents a need which overrides the importance of protecting 390.3 square feet of wetlands. Development of the pipeline will include all practical measures, including HDD, to avoid earth disturbance in the wetland and the hand cutting of trees, to mitigate any adverse impact on the wetland. The conversion of the 390.3 square feet of wetland from a forested wetland to an emergent wetland will not result in the resources of the Pinelands being substantially impaired.

#### Vegetation Management Standards (N.J.A.C. 7:50-6.23 & 6.26)

The proposed natural gas pipeline will be located almost entirely within existing rights-of-way and roads. In accordance with N.J.A.C. 7:50-6.23(a), the proposed clearing and soil disturbance in the vicinity of the JB-MDL gate at County Road 547 is limited to that which is necessary to accommodate the proposed development.

The Landscaping and Revegetation guidelines of the CMP (N.J.A.C. 7:50-6.26) recommend the use of grasses that are tolerant of droughty, nutrient poor conditions. N.J.A.C. 7:50-6.26 lists grass species that meet this standard. To stabilize the disturbed areas associated with the remote operating valve station, the applicant proposes to utilize a seed mixture which meets that recommendation.

#### Threatened and Endangered Species Protection Standards (N.J.A.C. 7:50-6.27 & 6.33)

The applicant completed a habitat suitability assessment and threatened and endangered (T&E)

species surveys for Pinelands designated T&E animals and plants. No T&E animal species were identified by NJNG within the immediate vicinity of the proposed development. Nonetheless, as an additional precaution, NJNG intends to install safety fencing during construction to protect threatened or endangered species habitat from disturbance and will use silt fence as an exclusion barrier in areas adjacent to suitable habitat areas. Thus, there will be no irreversible adverse impacts on habitats that are critical to the survival of any local populations of threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.S.A. 23:2A-1 *et seq.*

With regard to threatened or endangered plant species, the survey identified a population of Sickie-leaved golden aster in the vicinity of the proposed natural gas project to be constructed on JB-MDL. As initially designed, a small portion of this population (0.20 acres) would have been impacted as part of the work area for a proposed Horizontal Directional Drilling (HDD) operation. However, as a result of discussions with Commission staff, and in order to avoid impacts to this population, the design of the project was revised on November 25, 2015, to eliminate the HDD in this area and, thus, the impacts to the Sickie-leaved golden aster population were eliminated. Instead of the HDD, the applicant is using a conventional bore that shortens the length of the construction impact and avoids the plants. Thus, given the redesign, and that the proposed natural gas pipeline will be constructed almost entirely within existing rights-of-way and roads, the proposed project will not result in irreversible adverse impact on the survival of the local population of this T&E plant species.

#### Stormwater Management Standards (N.J.A.C.7:50-6.84(a)6)

The CMP at N.J.A.C. 7:50-4.2(b)5x requires the submission of a stormwater management facilities map for applications for major development. The CMP stormwater standards at N.J.A.C. 7:50-6.84(a)6 require that applicants address any changes to the rate of runoff and increase of runoff volume for any major development application. The proposed natural gas pipeline will be located almost entirely within existing rights-of-way and roads. In these instances, there will be no change to the surface conditions, changes to stormwater runoff rates or increases in stormwater volume. Thus, stormwater management facilities are not required.

As discussed above, however, there is one segment of the proposed project that will result in the clearing of forest. The definition of major development includes any grading, clearing or disturbance of an area in excess of 5,000 sq. feet. N.J.A.C. 7:50-2.11. The Commission staff reviewed the stormwater management plan and calculations submitted as part of the application to demonstrate compliance with the stormwater requirements of the CMP and determined that the proposed natural gas project is consistent with these standards.

#### Cultural Resource Standards (N.J.A.C. 7:50-6.151)

A Phase 1 Cultural Resource Surveys was completed for this application. The submitted survey concluded that no archaeological resources or historic properties eligible for Pinelands Designation will be adversely impacted by the proposed development. Commission staff reviewed the survey and concurred with its findings. The proposed development is consistent with the CMP cultural resource standards.

## **PUBLIC COMMENT**

As noted above, the Commission provided an opportunity for the public to provide comment in person at a Special Meeting conducted on July 26, 2017, and through the submission of written comments until the end of the day on August 2, 2017. Notice of these public comment opportunities was provided on the Commission's website on June 9, 2017 and sent to the Asbury Park Press, Press of Atlantic City, Burlington County Times and Cherry Hill Courier Post on June 12, 2017, announcing the opening of the public comment period, and on June 20, 2017 for the July 26, 2017, Special Commission Meeting.

The July 26, 2017 meeting was conducted at the Pine Belt Arena in Toms River, New Jersey. The Pine Belt Arena is located approximately 9 miles from the proposed portion of the NJNG natural gas transmission pipeline subject to the Commission's jurisdiction. During this meeting, the Commission received public comment on the NJNG natural gas pipeline from 45 individuals over approximately 4 hours. Additionally, the Commission received 1,319 written comments on the application prior to the August 2, 2017 close of the written comment period.

As is evident from the transcript of the Commission's July 26, 2017 Special Meeting and the written comments the Commission received, commenters cited a variety of reasons for supporting or for opposing NJNG's proposed natural gas pipeline. Because the Pinelands CMP does not contain standards regarding some of these comments (such as job creation benefits, fracking, impacts of aviation activities on the proposed pipeline, alternative routes outside of the Pinelands Area, issues pertaining to construction of the proposed SRL outside of the Pinelands (i.e. Bordentown, Chesterfield and North Hanover Townships), focusing on renewables rather than permitting fossil fuel infrastructure, etc.), they are not germane to the Commission's decision as to whether the 12.1-mile portion of NJNG's proposed natural gas pipeline that is to be constructed within the Pinelands Area is consistent with the standards and objectives set forth in the Pinelands CMP and the Pinelands Protection Act that are addressed below.

A number of other points were raised by commenters that do bear upon the Commission's decision in this matter. These generally relate to the consistency of the proposed natural gas pipeline with the standards and objectives of the Pinelands CMP and the Pinelands Protection Act: whether the proposed natural pipeline is associated with the function of JB-MDL; an allegation of avoiding regulatory compliance; concerns regarding Horizontal Directional Drilling; objections to the review process and potential environmental impacts as a result of construction and operation of the proposed natural gas pipeline. To more fully inform the Commission's decision making process, the Executive Director has focused the response to public comment on these issues that directly pertain to the conformance of the proposed natural gas pipeline with the standards of the Pinelands CMP.

### **I. The Proposed Natural Gas Pipeline is Not Associated with the Base**

#### **Comment:**

Numerous comments were submitted to the effect that the proposed natural gas pipeline is not a permitted use in the Military and Federal Installation Area because it is not associated with the function of the Base. These comments generally fell into the following categories: 1) the use of the Base is a ruse, because there is no actual connection from the proposed natural gas pipeline to the Base or its activities; 2) there is no benefit to the Base; 3) there is no demonstrated military

need or purpose for the proposed natural gas pipeline; and 4) there are alternatives to the proposed route.

Commenters stated that the proposed natural gas pipeline project violates the permitted use standards for the Military and Federal Installation Area (N.J.A.C. 7:50-5.29(a)), because there is no actual connection from the proposed pipeline to the Base or to any activity on the Base at any point. Others stated that the use of the Base is a ruse; the connection to the Base is a cover to build the pipeline; the proposed natural gas pipeline just uses the Base as a path to get from one side of the Base to the other; and there is no provision for a service feed to exist on the base.

Other commenters noted that there are no plans to construct an interconnect station to allow for a connection from the proposed natural gas pipeline to the Base. Another commenter stated that the proposed pipeline has no value or tie in to the Base and, as a result, there is no provision to provide service to the Base. Other commenters noted that the plans did not include pressure lowering equipment to make the gas available to the base and that the total demand for gas at the Base is less than ½ of 1% of the total capacity of the pipeline.

Commenters felt that the proposed natural gas pipeline failed to provide a benefit to JB-MDL and therefore, was inconsistent with the permitted use standards of the CMP. These commenters noted that there had been no demonstration of substantial benefit or an analysis of the benefit to the Base. Comments noted that only the Lakehurst section of JB-MDL is served by NJNG, that a portion of the Base is served by PSE&G and that there are no plans to create redundant service to the other sections of the base, which is larger than Lakehurst. Another commenter stated that JB-MDL derives no benefit from the proposed natural gas pipeline because the project does not serve any actual or demonstrated purpose on the Base.

Comment was submitted that there is no military need for the proposed natural gas project. A number of commenters, citing the 2012 Air Force Installation Plan, stated that the Air Force has already acknowledged that the existing gas supply at the Base is adequate, the gas supply to JB-MDL is non-interruptible and supply capacity is not an issue for future growth at the Base. Other commenters note that the letters received from the Base Commanders do not say that the project is for a military purpose. One commenter stated that there has not been a single word from the new Base Commander as to the Base's need for the project. Other commenters noted the lack of any analysis for the need for gas supply redundancy at JB-MDL. Another Commenter indicated that the Base is receiving \$50,000 per year from NJNG as a rental fee for an easement for the proposed natural gas pipeline. This commenter stated that this payment is proof that the project is not needed for the Base, because if it were the Base would have waived that fee.

Comments were received challenging the need for the proposed project generally. These commenters submitted a report prepared by Skipping Stone entitled "Analysis of the Southern Reliability Link as a Response to a Single Point of Failure" dated July 2017.

**Response:**

The comments received seem to be premised on a misinterpretation of the CMP's permitted use standards for a Military and Federal Installation Area (N.J.A.C. 7:50-5.29(a)). That standard permits the development of any use "associated" with the function of the Federal installation, provided such use complies with the stated conditions. The CMP does not require that the proposed use benefit the Federal installation or that such installation demonstrate a need, let

alone a substantial need or a true military need for the use. Nor does the CMP require that the land use serve a military purpose. Rather, the use need only be related to the function of the installation.

The fact that PSE&G serves other parts of the Base and there are no plans to provide redundant service to those areas also has no bearing on whether the proposed natural gas pipeline is associated with the function of the Base. It is sufficient that NJNG serves the Lakehurst section of the Base and that the proposed natural gas pipeline will provide an alternate supply source to that portion of the Base.

Moreover, the record fully supports the finding that NJNG's proposed natural gas pipeline is associated with the function of JB-MDL. The proposed natural gas pipeline does not solely pass through the base, but as stated by Former Base Commander Fredrick D. Thaden, in his letter dated February 13, 2015, the project addresses a known natural gas deficiency on JB-MDL. This redundancy is gained by looping the pipeline that serves the Base. Looping occurs when a pipeline is paralleled (looped) by a second pipeline, both of which serve the same gas source and destination. This "looping" would occur because the proposed natural gas pipeline would provide an alternative supply feed from Transco's interstate natural gas supply main in Chesterfield to NJNG's existing transmission line located on Colonial Drive in Manchester Township. This is an alternative to the current gas supply from TETCO and further away parts of smaller Transco pipeline. From there, NJNG would be able to serve the Lakehurst section of JB-MDL through its existing natural gas transmission system and its existing connection to its distribution system on Lakehurst.

The former and current Commanders of JB-MDL have all discussed JB-MDL's vulnerability to interruptions in energy supply due to natural or manmade events and the need for energy reliability and redundancy. Colonel Thaden, in particular, identified gas supply to the eastern portion of JB-MDL as a critical system deficiency. Furthermore, all three base commanders acknowledged that NJNG's proposed natural gas project provides a redundant natural gas supply to the Base and that the loss of gas supply would cripple its ability to perform its various missions. In fact, Colonel Thaden, in his letter to Assemblyman Dancer dated November 6, 2015, discussed JB-MDL's location near the terminus of the existing pipeline (i.e. in the southern portion of NJNG's service territory) and how the proposed project would provide natural gas redundancy to the Base by looping the delivery pipeline.

Moreover, despite comments to the contrary, it is a fact that there is an existing natural gas distribution system on the Lakehurst section of JB-MDL. This distribution system begins near the Base's entrance on CR 547 and extends west to the National Guard Center on County Route 539. Thus, it is of no consequence that the proposed pipeline does not contain an interconnection directly on the Lakehurst section of JB-MDL, that the plans do not include pressure lowering equipment, that the plans identify a valve site on CR 539 for a future regulator station or that the capacity of the SRL is greater than the demand for gas on the Base. The CMP does not require that a land use solely serve the Federal installation in order to permit its development on a Military and Federal Installation. See N.J.A.C. 7:50-5.29(a).

As discussed in the BPU's January 27, 2016 Reliability & Security Order, "[t]he entire length of the Pipeline is designed to provide adequate supply and reliability to the southern portion of the Petitioner's service territory by interconnecting with an existing twenty four (24) inch transmission line in Manchester." This additional redundancy benefits JB-MDL, which is served



from this system. BPU Energy Order, Dkt. No. G015040403, page 40. Thus, JB-MDL, which currently is at the end of NJNG's existing transmission system, from TETCO and smaller, separate parts of Transco, will now be at the beginning of the transmission system supplied by Transco at the new interconnection at Colonial Drive. Following the construction of the SRL, natural gas from this alternate supply would be able to serve the base, through the existing natural gas distribution system on the Lakehurst section of JB-MDL. As stated in the BPU Energy Order, "[t]he current TETCO interconnection, at the northern end of NJNG's transmission system servicing the Counties, essentially equates to a single point of failure. The design of SRL, and the fact that it provides an alternate interstate supply source to the southern portion of NJNG's transmission system, mitigates the potential of impacts of this failure point." Id. at 39.

The July 2017 Skipping Stone report does not alter this finding. The focus of the Skipping Stone report is to demonstrate why the SRL is not necessary in general and to also provide what Skipping Stone presents as a better and more cost effective solution to address a single point of failure on the one section of the entire TETCO network across which a major failure would substantially disrupt supplies to NJNG. Skipping Stone identified this alternative as a 12-mile stretch of existing pipeline known as the Freehold Lateral. Skipping Stone proffers a remedy to this single point failure through the construction of an interconnection to Transco near where it crosses the TETCO lateral in Freehold, New Jersey. Skipping Stone refers to this solution as the Freehold Back-Up Reliability Solution (FBURS)<sup>10</sup>.

This fundamental premise of the Skipping Stone report is fatally flawed. The report states that the scenario of a single point of failure upstream from the NJNG TETCO connection that would result in a disruption of the supply of gas to the NJNG system is incorrect. The report suggests that supply could be brought in from another direction on the line as it allows for gas to flow in two directions. Therefore, a single point of failure upstream could be resolved without disruption in service. Secondly, the report notes that the NJNG system is itself highly redundant such that the SRL is not needed.

Contradicting these statements, a failure on the TETCO mainline west of New Jersey occurred on April 29, 2016 near TETCO's Delmont Compressor Station in Westmoreland County, Pennsylvania. This disruption resulted in the closure of TETCO's line 27 as well as three other pipelines running through the same corridor, which resulted in the inability of 1 billion cubic feet of natural gas per day to reach mid-Atlantic markets, including New Jersey. This disruption impacted supply not only to NJNG, but to other regional customers. Over 80% of supply was lost the first two days and over 54% of supply was lost over the next nine days. In fact, the TETCO<sup>11</sup> pipeline system did not return to full service until November 1, 2016.

Significantly, following the TETCO disruption, the BPU, at its July 26, 2017 meeting discussed a table top exercise involving a hypothetical disruption of natural gas supply in parts of Central New Jersey that was patterned after the TETCO Delmont disruption. Minutes, July 26, 2017, BPU meeting, Item 6A Reliability & Security, 3. The table top exercise was named New Jersey Pilot Light 2017 and presented a scenario of a catastrophic explosion of a major interstate line within the state, during peak demand in the cold of winter, which resulted in a 14-day disruption

---

<sup>10</sup> The Skipping Stone report does not conclude that the SRL will not provide redundancy to JB-MDL, but rather that the FBURS is just as reliable.

<sup>11</sup> This information comes from the Minutes of the BPU July 26, 2017 Board Meeting. This TETCO pipeline provides gas supply to E-Town Gas, NJNG and PSE&G. Id. at 4

of this natural gas feed until the damaged line could be repaired. *Id.* at 5. One of the lessons learned by the BPU staff from the exercise was that identification of more diverse gas supplies and interconnection to multiple interstate sources could improve resiliency in the gas sector. *Id.* at 6. Significantly, the BPU staff identified the SRL as an example of how an alternate supply could help mitigate a disaster of this magnitude. *Id.* In fact, in discussing the Delmont disruption as part of this exercise, BPU noted that based on that scenario NJNG would have been the most impacted and that had the incident occurred in peak demand season rather than April, it is likely it would have resulted in some immediate gas curtailments for parts of the Eastern Region of NJNG's service area.

The Skipping Stone report also fails to provide an alternate supply interconnection at the southern end of NJNG's service area. Although the FBURS provides an interconnection to an alternate interstate natural gas main, Transco, that connection also would occur north and west of Ocean, Burlington and Monmouth Counties (i.e. the northern end of NJNG's territory). As such, the FBURS would not address a disruption within NJNG's own transmission system, which the SRL does provide.

As discussed in BPU's March 18, 2016 Energy Order, Dkt. No. G0105040403, NJNG services customers in Monmouth, Ocean, Morris, Middlesex and Burlington Counties. NJNG's network consists of two-hundred and twenty-seven (227) miles of large diameter transmission lines, approximately 6,930 miles of distribution mains, and approximately 473,000 service lines.

Customers in parts of Ocean, Burlington and Monmouth Counties (the Counties) are most vulnerable to an interruption of supply, because they are served by a TETCO connection that provides approximately eighty-five (85%) of NJNG's winter peak day gas supply. *Id.* at 38. NJNG has a contract volume of 591,855 dekatherm Dth/day, with a total system capacity of 771,112 Dth/day at that interconnection. *Id.* BPU found that in the event of a disruption in the TETCO supply, it is evident that NJNG's existing two remaining interconnections with Transco, which are also in the northern end of NJNG's transmission system servicing the Counties, lack the ability to maintain adequate pressure at the southern end of the system. *Id.* at 39. According to BPU, these two Transco interconnections have an approximate capacity of 76,500 and 124,500 Dth/day and their expansion is limited by existing Transco transportation capacity available. Additionally, although NJNG has LNG facilities to help maintain system pressure, BPU found that these facilities have a maximum send-out of 170,000 Dth/day. *Id.* At maximum send-out with a full tank, NJNG's current LNG supplies will last approximately seven (7) to ten (10) days. Thus, BPU found that any disruption in the TETCO interconnection, that outstrips the capacity of the existing Transco interconnection and NJNG's existing LNG facilities' ability to maintain adequate system pressure, will result in the loss of service to customers in the southern portion of NJNG's service territory. *Id.*

## **II. The Commission Staff Advised the Applicant to Locate the Proposed Pipeline on JB-MDL in order to Avoid Regulatory Requirements**

### **Comments:**

Several commenters submitted copies of emails that they stated were between NJNG and the Base. Commenters noted that the emails were obtained by a FOIA request. All names on the emails have been redacted so one cannot identify the senders and recipients or their affiliations.

Based on these emails, commenters stated that the Pinelands Commission staff advised the applicant to locate the pipeline on the Base in order to avoid regulatory requirements.

**Response:**

The Pinelands Commission held two pre-application meetings regarding the proposal to install a natural gas transmission pipeline. These pre-application meetings were held on May 6, 2014 and October 14, 2014. Attendees at both meetings included representatives for the applicant, NJNG, and the Pinelands Commission. The point of pre-application meetings is to have a preliminary discussion regarding a potential project and its consistency with the requirements of the CMP. At the time these meetings are held, projects are not fully designed. At the May 6, 2014 meeting, the pipeline routes being considered by the applicant were discussed. Commission staff outlined the CMP standards that would apply, including the Minimum Standards for Land Use Distribution and Intensities (Land Use) at N.J.A.C. 7:50-5 and the Management Programs and Minimum Standards at N.J.A.C. 7:50-6. At the May 6, 2014 meeting, the Commission staff explained the Land Use standards associated with each of the Pinelands Management Areas located along the alternate routes being considered. Public service infrastructure, such as a natural gas pipeline, may be permitted, permitted with certain restrictions or conditions, or not permitted, depending on the Pinelands Management Area in which it is located. The route alternatives discussed included several Pinelands Management Areas: Forest Area, Preservation Area District, Rural Development Area, Pinelands Town, Regional Growth Area and Military and Federal Installation. The Land Use standards for each Management Area were discussed. The applicant was made aware where public service infrastructure was permitted, where it was prohibited and where additional standards would need to be met.

Based on select emails, commenters are suggesting that there is no need for the project on the Base and that the route through the Base was chosen based on a suggestion made by the Pinelands Commission staff. Commenters claim that the need for the pipeline on the Base was “fabricated”. The facts do not support this claim. At the first pre-application meeting held on May 6, 2014, the applicant had four route alternatives. Three of these alternatives were routed through the Base. These routes were identified by the applicant prior to any discussion with the Commission. Further, at that first meeting, the applicant noted that they had already had discussions with the Base regarding this matter. At the second pre-application meeting on October 14, 2014, representatives from the Base were in attendance and noted their concerns regarding energy reliability.

The applicant included potential routes through the Joint Base at its initial pre-application meeting with the Commission staff. As a result of discussion at that meeting regarding the CMP Land Use standards, a modification to one of the proposed routes was made to avoid going through a Pinelands Forest Area, because the applicant was told that public service infrastructure would not be permitted in that area.

**III. NJNG’s Payment of \$50,000 per year to JB-MDL for an Easement Undermines the Military Need for the Project**

**Comment:**

Comments were made regarding the \$50,000 per year NJNG is paying to the Base for an easement. Commenters associated the payment for the easement as confirmation that there was no need for the pipeline by the Base. Commenters suggested that if the Base truly had a need for the pipeline, it would have waived the payment for the easement.

**Response:**

The contention that the pipeline will not benefit the base because the consideration for the easement (easement fee) was not waived is erroneous. Although it is true that an easement fee may be waived in certain circumstances, failure to waive the fee does not mean that the project does not benefit the Base. That is simply not the case.

It is the policy of the Base to impose an easement fee. Air Force guidance on this matter (as set forth in the Air Force General Easement Template, which is available on-line) notes that easements are not required to be granted to a company that provides utilities for installation use only. The Air Force obtains necessary utilities such as water, electric, gas, sewer, by means of a Utility Services Contract. However, easements are required for utility lines that also provide commercial service to the general public. The easement can be waived, but as one commenter noted this can occur only when the use is “primarily for the benefit of the Government” (from the Air Force General Easement Template). In this instance, the pipeline provides clear benefit to the Base but benefits are also provided to the general public. The decision on whether to require payment for the easement was not based on whether the project benefits the base. Moreover, as discussed above, whether the proposed natural gas pipeline benefits the Base is irrelevant. The CMP at N.J.A.C. 7:50-5.29(a) only requires that use be “associated” with the function of the Federal Installation.

**IV. Comments by NJNG’s General Counsel Undermines the Military Need for the Proposed Project**

**Comment:**

Several commenters, including one who claims to be a former New Jersey Natural Gas employee, stated that the Board of Directors of New Jersey Natural Gas was advised by its then general counsel in May 2014 that “it could not legally claim a military designation for the project by simply moving it onto the base and thereby evading compliance with the CMP”. No documentation in support of this claim was submitted by any of the commenters.

**Response:**

The Pinelands CMP does not include any standard related to a military designation nor is such a designation required for application to the Commission.

To address the specific comment regarding a NJNG Board Meeting, New Jersey Natural Gas has responded that the statement is false; no such advice was given. NJNG stated that New Jersey Resources will not reveal confidential information discussed at a meeting of its Board of Directors, but it can confirm that none of the commenters were present at the May 2014 Board Meeting.

**V. Pipeline Safety: Leaks/Explosion**

**Comment:**

Commenters expressed concern regarding safety issues associated with the pipeline. One area of concern expressed related to homes, schools, churches and other establishments being located in close proximity to the pipeline. Commenters provided examples of pipeline explosions that have occurred throughout the country from natural gas and oil pipelines, as well as other facilities. Commenters expressed concerns regarding the proximity of the pipeline to airport runways on the Base and heavy duty trucks using nearby roads.

Comments were submitted expressing concern with unexploded ordnances on the Base that could be encountered during construction. Commenters stated that the Base was unaware of the location of all of these ordnances.

Commenters raised concerns regarding the potential for corrosion to the pipeline due to the presence of the acidic water and soil typically found in the Pinelands.

Commenters noted that there will be impacts to the Kirkwood/Cohansey aquifer and drinking water.

**Response:**

New Jersey requirements governing the construction, operation and maintenance of transmission and distribution lines for the portions of natural gas carried by intrastate natural gas pipeline operators are included in N.J.A.C. 17:7 Natural Gas Pipeline Rules. These rules are implemented by the BPU. As part of its review of the project, BPU staff reviewed the design and construction plans associated with the project and performed field inspections for the entire proposed route and various alternative routes.

Based on its review, the BPU staff found the pipeline to be in compliance with all relevant State and Federal Safety regulations. To further ensure the safety of the pipeline the BPU, in its January 27, 2016 Reliability and Security Order, required NJNG to install remote controlled valves for emergency shutdown and have a comprehensive transmission pipeline integrity management program which includes performing inline inspections with “smart pigs<sup>12</sup>”. Dkt. No. GE1504040402m p.3 In addition, NJNG is to have full time inspectors qualified by training and experience overseeing the work in the field to ensure that it is constructed and installed in accordance with State and Federal requirements. This is in addition to the pipeline safety compliance inspection that will be done by BPU staff during and after construction. In addition, once the pipeline is in operation, NJNG will monitor the pipeline 24 hours a day, 7 days a week from their control room from which they can operate all the remotely controlled valves and if necessary shut down the flow of natural gas. According to the BPU Pipeline Safety Rules, N.J.A.C. 14:7 et. seq., NJNG is also required to have Emergency Response and Operating and Maintenance Procedures in place and to coordinate them with state, county and local emergency management personnel.

---

<sup>12</sup> Smart Pigs are Pipeline Inspection Gauges (hence the acronym “PIG”), which travel internally through a pipeline to detect stress corrosion cracking, general and pitting corrosion. <http://smartpigs.net/>

With regard to the issue of unexploded ordnances, based on historical uses of the Base, it is known that there are unexploded ordnances located at the Base. The Base has identified where these use areas are and the proposed pipeline easement is outside of the areas designated by the Base as having a high or moderate potential for having unexploded ordnances.

It is possible, however, that unexploded ordnance could be encountered outside these areas. To address this, the Base Safety Office will provide safety briefs to the construction personnel to provide guidance on how to identify unexploded ordnances. In addition, NJNG will hire an expert in identifying unexploded ordnances and a Base expert will be available to handle any unexploded ordnance that may be found.

With regard to corrosion, the industry standard for preventing corrosion of the pipe due to acidic water or soils is to use pipe that has a polyethylene coating. This coating separates the pipe from the surrounding soil and protects the pipe from corrosion. In addition, NJNG will test the pipeline by applying an induced current that will identify any corrosion that might be occurring. This testing is done on a bi-monthly basis.

There are many protections in place to ensure the Kirkwood/Cohansey aquifer will not be impacted by pipeline leaks. The pipe is designed to meet standards developed to ensure the integrity of the pipeline. The pipes are coated with polyethylene to protect against corrosion that could lead to a leak occurring. The pipeline will have safety valves installed that are remotely controlled by the utility that will limit any leak should it occur. The pipeline will be monitored and inspected on a regular basis by the utility and the BPU. Further, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) has overall regulatory responsibility for pipelines and they oversee the inspections done by the States. These many layers of protection provide assurances that significant leaks of natural gas will not occur. Should there be an incident resulting in a release, the response mechanisms including remote control valves will limit the scope.

## **VI. Horizontal Directional Drilling (HDD)**

### **Comment:**

Commenters expressed concern regarding the proposed use of HDD on this project. Commenters stated there are risks associated with HDD, the most notable being inadvertent returns. An inadvertent return is the unintended transfer of drilling mud to the surface during boring machine operations. Commenters identified recent incidents associated with pipeline construction using HDD in Pennsylvania. Commenters stated that there is a need for more studies on the local conditions including soil type, geology, hydrology and local soil and groundwater contamination in order to ensure that the HDD will not have impacts.

### **Response:**

The use of HDD for construction of underground infrastructure is the preferred method of installing pipe. N.J.A.C. 7:7-12.15. See also, N.J.A.C. 7:7A-5.2(a). In fact, the NJDEP recommends HDD beneath any wetlands or stream crossings to avoid adverse land use impacts. See, N.J.A.C. 7:7A-5.2(a). HDD has been in use for over 50 years to install gas mains, water mains, electric lines and other facilities. The NJDEP Freshwater Wetland General Permit 2 pertains to Underground Utility Lines and authorizes activities in freshwater wetlands, transition

areas, and/or State open waters, necessary for the construction and/or maintenance of an underground utility line. See, N.J.A.C. 7:7A-5.2. The Department has the authority to adopt Freshwater Wetland General Permits when, after conducting an environmental analysis, the Department determines that the regulated activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands and State open waters. (See N.J.A.C. 7:7A-4.1). The GP 2 provides that Department approval is not required for a utility line that is jacked or directional drilled underground, if there is no surface disturbance of any freshwater wetlands, transition areas, or State open waters and there is no draining or dewatering of freshwater wetlands. Otherwise, the GP 2 requires a streamlined review. See N.J.A.C. 7:7A-5.2. The DEPs regulatory adoption of the GP 2 evidences the DEP's determination that jacking or directional drilling underground for utility lines has a de minimis impact on the environment. To provide further assurance of protection there are limitations included in GP 2 that address total permanent disturbance, width of permanent clearing, and post construction elevation. There is also a Nationwide General Permit 12 for Utility Line Activities. This Nationwide General Permit states that directional drilling is the preferred method of installation when possible, especially in tidal waters. On February 25, 2017, NJDEP issued a FWPA General Permit 2 to NJNG for its proposed pipeline.

The HDD incidents in Pennsylvania were HDD inadvertent returns. As a result, documents issued by the Pennsylvania Department of Environmental Protection imposed a temporary partial halt to the drilling. To minimize the potential of such incidents in New Jersey, the BPU requires at N.J.A.C. 14:7-1.22 that NJNG provide on-site inspection oversight immediately prior to and during any excavation and backfilling, and for the bored or horizontally directional drilled installations performed by other excavators in the vicinity of the pipeline. Further the Pinelands Commission staff recommends several conditions regarding HDD activities that include having an independent licensed professional engineer with proven experience in HDD installation, be present at all times HDD activities are being undertaken in the Pinelands Area. This individual will ensure that all HDD activities: are conducted in accordance with all approved plans; will monitor drill hole pressures and walk the area in which HDD is being conducted to identify any potential break outs of bentonite; will ensure that appropriate measures, such as installation of silt fences, hay bales, inflatable berms, etc. are taken during HDDs to prevent the discharge of bentonite to wetlands, streams or any other water body or beyond the immediate confines of the drill site; and implement the HDD Mitigation Contingency Plan and will be responsible for implementation of the Plan.

## **VII. Wetland Impacts Associated with Installation of the Proposed Natural Gas Pipeline**

### **Comment:**

Commenters stated that the project violates N.J.A.C. 7:50 -6.13 – Linear improvements – in that it poses significant risks to the natural resources within the Pinelands without demonstrated need.

### **Response:**

While most of the route is to be constructed within existing rights-of-way and roads, there is one location on the Base where the pipeline crosses portions of an upland forest and wetland.

The CMP (N.J.A.C. 7:50-6.13) permits the installation of utility transmission and distribution facilities in wetlands provided the following conditions are met: 1) there is no feasible alternative route for the linear improvement that does not involve development in a wetland, or, if none, that another feasible route which results in less significant adverse impacts on wetlands does not exist; 2) the need for the proposed linear improvement cannot be met by existing facilities or modification thereof; 3) the use represents a need which overrides the importance of protecting the wetland; 4) development of the facility will include all practical measures to mitigate the adverse impact on the wetland; and 5) the resources of the Pinelands will not be substantially impaired as a result of the facility and its development as determined exclusively based on the existence of special and unusual circumstance. The proposed crossing would result in the permanent removal of 0.42 acres (18,295 sq. ft.) of upland trees (predominately pitch pines) and the disturbance of 390.3 sq. ft. (.009 acres) of wetlands.

The pipeline will be horizontal directionally drilled under the wetlands area. However, as discussed above, the 390.3 square feet of wetland disturbance is necessary to provide for the ongoing operation and maintenance of the proposed natural gas pipeline given it is not located under or adjacent to a road. After construction, the 390.3 square feet of forested wetland will be an emergent wetland.

The information submitted as part of NJNG Pinelands Development Application and which was verified by the Commission staff demonstrates compliance with the 5 conditions of N.J.A.C. 7:50-6.13. Specifically, based upon the staff's review, there is no feasible alternative route for the proposed natural gas pipeline that does not involve development in wetlands or another feasible route which results in an impact to less than 390.3 square feet of wetlands. The proposed pipeline will provide a second redundant supply of natural gas; the need for which cannot be met by existing facilities or modifications thereof. The provision of a second redundant supply of natural gas represents a need which overrides the importance of protecting 390.3 square feet of wetlands. Development of the pipeline will include all practical measures, including HDD, to avoid earth disturbance in the wetland and the hand cutting of trees, to mitigate any adverse impact on the wetland. The conversion of the 390.3 square feet of wetland from a forested wetland to an emergent wetland will not result in the resources of the Pinelands being substantially impaired.

## **VIII. Concerns Regarding Dewatering**

### **Comment:**

Comment was received regarding the need for a dewatering assessment of the route. Commenters identified the need for such an analysis as there could be impacts to wetlands. Also, such an analysis was noted as needed to determine if dewatering would increase the vertical hydraulic gradient in the areas of known groundwater contamination.

### **Response:**

The Department of Environmental Protection, Bureau of Water Allocation and Well Permitting issued six (6) Water Use Registrations for this project. Water Use Registrations were issued for each of the municipalities where the pipeline is proposed to be installed, of which three (3) are located in the Pinelands; Manchester, Jackson and Plumsted Townships.



The applicant has advised that the pipeline route is shallow so that, in general, dewatering will not be needed. Where groundwater is encountered, the dewatering that will be done as part of the project will be temporary and limited to keeping water out of the trench. The trench will be backfilled at the end of each day. There will be no lowering of the water table. Overall the dewatering will be at shallow depths, in small areas of excavation and for short duration. Further, the Environmental Assessment indicates that the few known areas of contamination of concern for this project are well below the depth of trench excavation and the proposed HDD installation. The applicant provided HDD profiles showing the deepest depth for the proposed pipeline to be at 20 feet.

## **IX. Contaminated Sites**

### **Comment:**

Commenters raised concerns based on the location of Superfund sites and other contamination at the Base. Concerns were expressed regarding contaminated plume migration in both soil and groundwater. Commenters noted that the impacts on this existing contamination should be addressed as there could be impact to other resources in addition to the Superfund sites. Comments were submitted questioning the impact on known contamination from the use of perfluorinated compounds at the Base.

### **Response:**

Issues related to the Superfund sites have been addressed by the NJDEP and the United States Environmental Protection Agency (USEPA). The NJDEP's review concluded that the pipeline is proposed in areas where there is no soil contamination. The NJDEP notes that there is groundwater contamination in some areas; however, it is 50 to 70 feet below ground surface and the pipeline will not be deeper than 20 feet below ground surface. Therefore, contaminated groundwater will not be encountered. The USEPA reviewed JB-MDL's March 2017 Environmental Assessment regarding the project and made a finding of no significant impact.

## **X. Threatened and Endangered Species**

### **Comments:**

One commenter expressed concern regarding potential impacts of a proposed "lay down" area associated with the installation of the natural gas pipeline. Specifically, the commenter noted that the Threatened and Endangered Habitat Assessment Report submitted by the applicant identified a population of Sick-leaved golden aster (*Pityopsis falcate*) within the "lay down" area and that a Northern pine snake (*Pituophis melanoleucus*) nest was located within 100 feet of the "lay down" area.

In addition, the commenter stated that the applicant's survey for Knieskern's beaked rush (*Rhynchospora Knieskernii*) concluded in the month of August and that the United States Fish and Wildlife Service (USF&WS) has established that mature fruit is needed to identify this species, which requires surveys to be conducted through September.

**Response:**

On November 30, 2015, the applicant submitted a letter and a revised plan. The submitted information noted that the proposed “lay down” area has been removed and that the natural gas pipeline would be installed within the limits of the existing road using a conventional bore installation process. That revision eliminated all potential impacts to the local population of Sickle-leaved golden aster. To avoid any potential impacts to habitats critical to the survival of any local population of Northern pine snake, an exclusion barrier will be installed to separate these habitats from the construction area.

The applicant submitted a Threatened/Endangered Species Final Report (Report), prepared by DuBois Environmental Consultants and dated July 27, 2015. The Report states that surveys for New Jersey State endangered and Pinelands listed plant species of concern occurred during the fall of 2014, and during spring and mid-to-late summer of 2015. The Knieskern’s Beaked-Rush Recovery Plan issued by the USF&WS notes that fruiting typically occurs from July to September. The submitted Report demonstrates that the threatened and endangered species survey was completed during the appropriate timeframe.

Further, one of the recommended conditions of this report is that the applicant engages, at least, one independent biologist qualified in the identification of threatened or endeared plants and threatened or endangered animals and their habitats. The biologist must be present during all times that clearing and /or construction activities are occurring. The biologist will, amongst other things, ensure that clearing and /or construction activities do not impact threatened or endangered plants or threatened or endangered animal species or their habitat.

**XI The Review Process was Flawed****Comments:**

The Commission received comments on the process used to review the application. Comments included the need for additional opportunities for the public to comment including night meetings, desire for the Commission meetings to be held nearer to where the people who oppose the pipeline live, and the lack of an evidentiary or adjudicatory hearing.

Commenters also stated that the process followed by the Commission to review this project was done in violation of the Administrative Procedures Act. One commenter noted that it did not include this in their comments as this issue is currently pending before the Appellate Division.

**Response:**

The Commission is aware of the public’s interest in this application and the need to ensure that the Commission is presented with a full record for its consideration. Consequently, the Commission provided the public with a 50 day written comment period, as well as the opportunity to provide oral comments directly to Commissioner’s during a special meeting. During this time<sup>13</sup>, the application file was available for review at the Commission office.

---

<sup>13</sup> Information related to this application has been available for review at the Commission’s Office since late April 2014 and the application has been available since April 2015.

In regard to this project, the Commission's jurisdiction extends only to the portion of the proposed NJNG natural gas pipeline to be constructed within the Pinelands Area. This portion consists of 12.1 miles, and is located in Jackson, Plumsted and Manchester Townships and within Joint Base McGuire-Dix-Lakehurst. The issues before the Commission concerning the NJNG application are, accordingly, limited to these areas and the portions of the project to be constructed outside of the Pinelands Area are not within the Commission's geographic, regulatory or legal purview.

In light of this, and to accommodate an anticipated large public turnout, a special meeting of the Commission was held at the Pine Belt Arena in Toms River on July 26, 2017. This venue is located approximately 9 miles from the proposed portion of the NJNG pipeline subject to the Commission's jurisdiction. By contrast, the requests for additional meeting locations and times referred to portions of the project located to the west and outside of the Pinelands. It is important to note that opportunities for public comment for the portions of the project outside the Pinelands were provided by both the NJDEP and the BPU as both agencies have regulatory jurisdiction in those areas.

The request for an evidentiary or adjudicatory hearing for this matter was addressed by the Commission in Resolution No. PC4-17-10 and in its response to the appeal by the Sierra Club and PPA, which was remanded to the Pinelands Commission by the Appellate Division by Orders dated January 31, and February 14, 2017. In response to the remand, the Commission decided that rather than have an adjudicatory hearing or trial type hearing it would rely on the record developed by the BPU and the Commission's regulatory program and would provide an opportunity for the public to comment in writing and at a special meeting of the Commission. See Resolution PC4-17-10. The Commission also decided that an evidentiary hearing was not necessary given the limited regulatory issues involved in this application. *Id.* The Commission, also expressly afforded the former appellants (the Sierra Club and PPA) the opportunity to submit any additional information that it wished as part of the public comments process. *Id.*

Further, in order to accommodate a request for an adjudicatory hearing, the requestor would need to meet the requirements for such a hearing established by the Administrative Procedure Act. See N.J.S.A. 52:14B-3.1-3.3. Specifically, the requestor would need to articulate a particularized property interest or statutory right which would entitle it to an adjudicatory hearing. In this instance, none of individuals who requested a hearing met these requirements.

With regard to the issue of whether the process followed by the Commission to review this project was done in violation of the Administrative Procedures Act, this issue is presently pending before the Appellate Division. It is the Commission's position that the review process for this application is legally valid and implements the Appellate Division's remand Orders as set forth in its response brief in the pending appeal.

### **EXECUTIVE DIRECTOR'S RECOMMENDATION**

The Executive Director concludes that the proposed NJNG natural gas pipeline, Application No 2014-0045.001, conforms to the standards of the Pinelands CMP. The Executive Director therefore recommends that the Pinelands Commission **APPROVE** it subject to the following conditions:

### **CONDITIONS**

1. Except as modified by the below conditions, the proposed natural gas pipeline project shall adhere to the plan, consisting of 15 sheets, prepared by AECOM and dated as follows:

Sheets 1-12, 14 & 14A, dated 8/17/2015

Sheet 13, dated 8/17/2015, last revised 11/25/2015

Site Plan, consisting of 1 sheet, prepared by AECOM, dated 10/23/2015.

Site Plan, consisting of 4 sheets, prepared by AECOM and dated as follows:

Sheets 1-4, dated 11/25/2015

2. Disposal of any construction debris or excess fill may only occur at an appropriately licensed facility.
3. Any proposed revegetation shall adhere to the "Vegetation" standards of the CMP found at N.J.A.C. 7:50-6.21 et. seq. Where appropriate, the applicant is encouraged to utilize the following Pinelands native grasses for revegetation: Switch grass, Little bluestem and Broom-sedge.
4. Prior to any development, the applicant shall obtain any other necessary permits and approvals.
5. Appropriate measures shall be taken during construction to preclude sedimentation from entering wetlands and said measures shall be maintained in place until all development has been completed and the area has been stabilized.
6. The limits of the proposed area of disturbance as depicted on the plans submitted by NJNG to the Commission, and delineated in Paragraph 1 above, shall be marked in the field using silt fence and orange plastic construction fencing.
7. The applicant shall engage at least one independent biologist qualified in the identification of threatened and endangered (T&E) plants and animals and their habitats, including T&E species and habitats unique to the Pinelands. The biologist(s) shall be present during all times that clearing and/or construction activities are being undertaken. The biologist shall ensure that all threatened and endangered species Best Management Practices (BMPs) identified in the plans delineated in Paragraph 1 above are being followed at all times during construction. The biologist(s) shall ensure that clearing and/or construction techniques being utilized do not adversely impact any habitat critical to the survival of any T&E species of animals or plants and that any such plants or animals discovered during construction are protected. The biologist(s) shall notify the Pinelands Commission immediately if any T&E plants or animals or habitat critical to their survival are discovered during construction, ensure that all clearing or construction activities in the vicinity of such T&E species or critical habitat immediately cease pending direction from the Pinelands Commission Executive Director and take all possible interim steps to protect such species or critical habitats. Such independent biologist(s) shall be approved by the Commission prior to being engaged by the applicant.

8. The applicant shall engage, subject to prior approval thereof by the Commission, an independent licensed professional engineer with proven experience in the installation of large diameter pipelines using the Horizontal Directional Drilling (HDD) method to be present at all times HDD activities are being undertaken. The independent engineer shall:
  - a. Ensure that all HDD activities are conducted in accordance with all approved plans;
  - b. Ensure that appropriate measures, such as installation of silt fence, hay bales, inflatable berm, etc. are taken during HDDs to prevent the discharge of bentonite to wetlands, streams or any other water body or beyond the immediate confines of the drill site;
  - c. Monitor drill hole pressures and walk the area in which the HDD is being conducted to identify any potential break outs of bentonite;
  - d. Ensure that prior to commencement of HDD, the applicant provides the Pinelands Commission's Executive Director with a copy of the HDD Break Out Mitigation Contingency Plan proposed to be utilized for all HDDs to be conducted during construction of the pipeline and that the Executive Director approves the plan in writing prior to any HDD activities occurring; and
  - e. Be responsible for immediate implementation of the Mitigation Contingency Plan should a break out of bentonite occur and require the immediate cessation of all HDD activities and contain the area of the break out to the smallest feasible area. The applicant shall within 24 hours notify the Pinelands Commission's Executive Director of the location of the break out and advise as to the response actions being taken to address the break out in accordance with the approved Mitigation Contingency Plan.