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February 19, 2016

*Via Email and Federal Express*

Mr. John Gray  
Office of Permit Coordination and  
Environmental Review  
NJ Department of Environmental Protection  
Mail Code: 402  
401 E. State Street  
7th Floor East Wing  
Trenton, NJ 08625

**Re: New Jersey Natural Gas Company Freshwater Wetlands Permit Applications**

Dear Mr. Gray:

This firm represents New Jersey Natural Gas Company ("NJNG"), in its applications for Land Use Regulatory Program permits (the "LURP Permit") related to NJNG's proposed Southern Reliability Link project (the "SRL Project"). NJNG seeks to construct the SRL Project in order to provide a redundant 30-inch natural gas transmission main for customers in Ocean, Burlington, and Monmouth Counties. The SRL Project is necessary to maintain NJNG's system integrity and reliability, supports Governor Christie's 2011 Energy Master Plan, and is reasonably necessary for the service, convenience and welfare of the people of New Jersey. Given that the SRL Project's proposed route passes through certain freshwater wetlands areas, NJNG has appropriately applied for the appropriate permits in accordance with current New Jersey Department of Environmental Protection ("DEP") regulations.

NJNG has been informed that the DEP is requesting letters of permission from the Counties of Burlington, Monmouth and Ocean, the Joint Base McGuire-Dix-Lakehurst, and any municipalities within which NJNG is installing the SRL Project in roads or rights-of-way ("ROW"). NJNG has indicated that the letters of permission have been requested in lieu of signatures on application forms for the LURP Permits. We believe that this prerequisite is not required because NJNG has the right to construct the SRL Project through the proposed route, regardless of the consent of opposing counties and municipalities.

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NJNG's right to proceed within the utility ROW is evidenced by the recent determination from the New Jersey Board of Public Utilities ("BPU") approving the alignment of the route of the SRL Project. On January 27, 2016, the BPU voted and approved NJNG's petition filed pursuant to N.J.A.C. 14:7-1.4(a), which requires approval for natural gas pipelines that are operated in excess of 250 psig and located within 100 feet of any building that is intended for human occupancy. Such approval confirmed that NJNG's SRL Project and its proposed route is sufficient, and that it meets or exceeds all federal and state pipeline safety requirements. A copy of the BPU's January 27<sup>th</sup> Order is attached. Thus, notwithstanding any municipal or county objections, the BPU has deemed the alignment of NJNG's proposed route sufficient. Based upon this order alone, NJNG believes that it has sufficient rights within the public ROW to allow the SRL Project to proceed without any additional property rights.

In addition, NJNG has also applied for an order from the BPU which, if issued, would grant the SRL Project additional rights which would obviate any additional approval from any county or municipality. In April 2015, NJNG filed a petition pursuant to the Municipal Land Use Law ("MLUL") at N.J.S.A. 40:55D-19, which requests that the BPU deem the SRL Project reasonably necessary for the service, convenience or welfare of the public. If such a determination is made by the BPU, the local zoning and planning requirements of the MLUL will not apply to the project. All municipalities and counties along the proposed SRL Project route were served with the petition. The petition has been the subject of discovery among the parties who petitioned to intervene in the matter, which included several municipalities and the County of Burlington, and was subject to both public hearings and an evidentiary hearing before the BPU.

The petition also included a request for the BPU to designate the SRL Project route as the practicable route pursuant to N.J.S.A. 48:9-25.4. Pursuant to that section, a gas public utility is required to request from any municipality a designation of a route through which a gas line may pass. If the municipality having control of any public street, road, or highway, fails or refuses to designate a practicable route, the gas public utility may petition the BPU to make such a designation in the particular county or municipality. Since several municipalities either did not respond to the request for the designation of the proposed SRL Project route, or failed to propose a practicable route, NJNG filed its April 2015 petition requesting the BPU to designate the SRL Project's proposed route as the practicable route. As NJNG has petitioned the BPU for such designation, county and municipality consent is no longer required.

Upon the expected approval of NJNG's April 2015 petition, the BPU will effectively designate and confirm the proposed SRL Project's route which traverses through the opposing counties and municipalities. There are no further rights necessary for NJNG to install the SRL Project in the public ROW that will be designated by the Board. As such, no approval would be necessary from any county or municipality following the BPU's determinations. Accordingly, the DEP should have no basis to reserve its decision on NJNG's application for LURP Permits, as the BPU's rulings successfully allow NJNG to construct the SRL Project along its current proposed

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route, regardless of county or municipality consent. Hence, any issues regarding consent have thus become moot.

Any prerequisite that the NJNG obtain letters of permission would essentially eviscerate the purpose of MLUL and route designation statute. The clear purpose under these statutes is to ensure that energy projects which are necessary for the public convenience and welfare be allowed to be constructed to advance needed energy projects in the State of New Jersey. This is particularly the case when the statutes cited above required notice to the impacted local governing bodies, the opportunity to participate as an intervenor in both public hearings and evidentiary hearings. In the case of the designation of a practicable route under N.J.S.A. 48:9-25.4, NJNG was required first to approach these entities for a practicable route prior to applying for the designation of a route by the BPU. By requiring an "owners" letter of permission from these municipal and county governments to obtain LURP permits, without which a project deemed necessary by the BPU cannot proceed, the LURP permitting process would become a mechanism to overrule the energy policy decisions of the BPU regarding need for a particular project, such as the SRL Project. This could not be the intent of the legislature in enacting statutes to resolve local "home rule" issues regarding energy policy, nor could it have been the intent of the Legislature to use environmental permitting to overrule BPU's energy policy decisions.<sup>1</sup>

In addition to NJNG's legal right to proceed as outlined above, it should be further noted that impact of the application to the counties and municipalities is unmistakably minimal. NJNG's proposed route would only permanently impact 0.043 acres of wetland transition areas located on public roadway ROWs, and temporarily impact 3.016 acres of same. Clearly such impacts are minimal at best, and hardly meet the threshold necessary to simply stop the DEP from processing NJNG's permit application.

Based on the foregoing, we believe NJNG's application for LURP Permits can be, and should be processed at this time given the BPU's approval of the SRL Project's proposed alignment. In the alternative, should the DEP require a final order by the BPU confirming NJNG's designated route as discussed above, such requirement should have no bearing on the processing of the LURP Permits related to the vast majority of the remaining areas that are not within the public ROW for which NJNG has received consent from private landowners. Finally, as a practical matter, there is no valid reason or regulation allowing the DEP to withhold processing of permit applications for the areas for which NJNG has received consent – simply because a very limited

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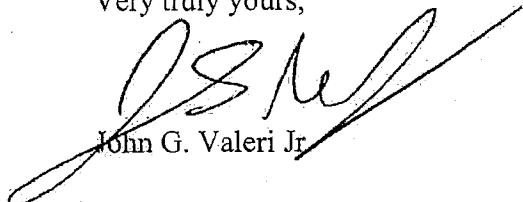
<sup>1</sup> The suggestion that ownership rights for the purpose of applying for a LURP Permit is illogical. A gas utility such as NJNG must obtain its right to condemn from the BPU. Condemnation of public land for another public use is subject to the doctrine of prior public use. Under this doctrine, condemnation of public property will be denied where the proposed use will destroy an existing public use or prevent a proposed public use unless the authority to do so has been expressly given by the Legislature or must necessarily be implied. It is inconceivable that the BPU or a subsequent court would rule that ownership of a public ROW should transfer through condemnation simply to allow the condemning public utility to grant permission for a LURP Permit to proceed. We are aware of no cases which allow a public utility to condemn public roads which are actively being used as a road.

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portion of the SRL Project crosses a public ROW. There should be nothing impeding the DEP from – at a minimum – processing the LURP Permits application regarding those areas that have already received consent. However, as discussed above, we believe such issues of consent are moot and that the LURP Permits is currently ripe for processing.

We appreciate your attention to this matter. Should you have any additional questions or require any additional information, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Valeri Jr.", written over a horizontal line.

John G. Valeri Jr

Cc: New Jersey Natural Gas (w/o enclosure)