STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF NEW JERSEY NATURAL GAS COMPANY FOR A DETERMINATION CONCERNING THE SOUTHERN RELIABILTY LINK PURSUANT TO N.J.S.A. 40:55D-19 AND N.J.S.A. 48:9-25.4	**:**	**DOCKET NO. GO15040403**

PETITIONER NEW JERSEY NATURAL GAS COMPANY'S REPLY BRIEF

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PRELIMINARY STATEMENT

With the Petition,[1] NJNG requests, pursuant to N.J.S.A. 40:55D-19, that the Board (a) determine that the SRL Project is reasonably necessary for the service, convenience or welfare of the public; (b) order that all zoning ordinances and regulations promulgated under the MLUL shall not apply to the SRL Project; and (c) designate the route for the SRL Project. NJNG's Post-Hearing Brief demonstrated that the Board should grant that relief because NJNG has presented overwhelming evidence establishing that both the SRL Project is reasonably necessary as a major redundant gas feed and the route proposed for the SRL is the best available. In their Briefs, Interveners and Participants put forth numerous arguments in an effort to refute and undercut that showing. None has any merit.

As to the reasonable necessity of the SRL as a redundant gas feed, several parties contend that NJNG failed to meet its burden because it cannot point to any historical supply interruptions that would have been avoided by a redundant feed. But it would be very poor planning for NJNG to wait for a catastrophic event before taking steps to mitigate the effects of one. Moreover, NJNG's Petition does, in fact, highlight recent service curtailments that caused the Company to realize a redundant feed is critical.

In their briefs, Chesterfield and the PPA devote considerable energy to arguing that NJNG has not established that the Joint Base needs or will benefit from the SRL. But NJNG's reasonable necessity showing is based solely on the need for a redundant feed for the Central and

[1] Capitalized terms not defined herein have the meaning ascribed to them in NJNG's Post Hearing Brief.

Ocean Divisions. Thus, whether the Joint Base will benefit from the SRL is immaterial to the Petition (though, as the Joint Base has stated, it certainly will benefit from the Project).

North Hanover, after reiterating the arguments NJNG refuted in its Post Hearing Brief, raises a new concern regarding the "Little Quaker" cemetery. That cemetery, however, is not located in North Hanover but rather in Upper Freehold, which reached an amicable resolution with NJNG by designating a route and never once raised any concern regarding the cemetery.

Rate Counsel contends that NJNG cannot prevail on the Petition until it proffers the actual cost of the SRL Project, rather than a cost estimate, so as to permit the Board to assess the reasonableness of that overall cost. Leaving aside that Rate Counsel mischaracterizes the relevance of the Project's cost on this 40:55D-19 Petition, NJNG has presented sufficient evidence regarding the SRL's estimated costs and anticipated benefits to permit the Board to determine that it is reasonably necessary.

Further, the PPA argues that the BPU cannot approve the SRL Project because it violates the Pinelands Comprehensive Management Plan (the "CMP"). But Commissioner Solomon already concluded when denying the PPA intervener status that that issue is not before the BPU on the Petition, but rather was for a parallel proceeding then pending before the Pinelands Commission. On December 9, 2015, the Pinelands Commission issued NJNG a Certificate of Filing, thereby establishing that the SRL Project is consistent with the CMP.

As to whether the proposed route is the best available for the SRL, none of the Interveners or Participants disputes that the proposed "Dancer" route through the Joint Base is not feasible. Several parties, however, refuse to accept the fact that NJNG is prohibited by law from using the preserved farmland that is part of the proposed JCP&L ROW Route. But as

explained below, the New Jersey Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq., clearly and unambiguously precludes NJNG from doing so, as numerous governmental entities, including Burlington County, have agreed.

In sum, the Interveners' and Participants' many and varied attempts to attack the SRL lack merit and fail to undercut the showing that the SRL Project is reasonably necessary for the service, convenience or welfare of the public served by NJNG. As a result, the Board should grant all of the relief requested by NJNG.

Finally, the Board should reject Burlington County's attempt to moot this proceeding by the post hoc adoption of zoning regulations designed to thwart the SRL Project.

LEGAL ARGUMENT

I. NJNG HAS DEMONSTRATED THAT THE SRL PROJECT IS REASONABLY NECESSARY AS A MAJOR REDUNDANT GAS FEED.

In its Post-Hearing Brief, NJNG demonstrated that the SRL Project is reasonably necessary for the service, convenience or welfare of the public because it will act as a major redundant gas feed from a different interstate supply source for the customers in NJNG's Central and Ocean Divisions, an area that currently receives more than 85% of its winter season peak day gas supply from a single interstate supplier, TETCO. The attempts by the Interveners and Participants in their Post Hearing Briefs to undercut that overwhelming showing are unavailing, as detailed below.

A. NJNG's Showing Is Not Based Solely On A "Hypothetical Occurrence."

Several parties argue that NJNG has failed to demonstrated that the SRL is reasonably necessary as a redundant gas feed because it does not (a) point to any historical system or supply failure that would have been mitigated by a redundant feed or (b) precisely quantify the

likelihood of such an event. Thus, Chesterfield argues, "the Company bases its entire Petition for BPU approval on a hypothetical occurrence, i.e., the prospect of a supply interruption or system failure." (Chesterfield Br. at 7.) The PPA likewise argues that NJNG has not demonstrated that a redundant gas feed is reasonably necessary because it "has no relevant examples of system failures to support the need for a redundant feed in this case."[2] (PPA Br. at 6.)

But as demonstrated in NJNG's Post-Hearing Brief, it would surely be poor—if not grossly irresponsible—planning for NJNG to wait for a catastrophic event resulting in widespread loss of gas service before taking steps to avoid or mitigate such an event. (See Ex. P-3, Lynch Rebuttal Test. at 6:20-7:8.) As Craig Lynch testified at the December 7, 2015 evidentiary hearing, having all of NJNG's "eggs in one basket" by relying a single interstate feed for nearly all of its gas supply in the Central and Ocean Divisions is simply, and quite obviously, not a good idea. (12/7/15 Tr. at 52:17-21.)

Further, Chesterfield's contention that "NJNG has offered absolutely no proof or reasoning as to why now the Company believes that supply interruptions from TETCO and

[2] The PPA also argues that NJNG cannot rely on the need for a redundant gas feed as the basis for the SRL because the CEO of NJNG's parent corporation has purportedly made contradictory statements as to the reasons for the Project during analyst and earnings calls. (PPA Br. at 3-4.) As an initial matter, the documents to which the PPA cites are not part of the record and the PPA, as a Participant in this proceeding, is not entitled to submit evidence, as demonstrated below. More importantly, the statements to which the PPA refers are entirely consistent with NJNG's showing that the purpose of the SRL Project is to provide a redundant feed in the Central and Ocean Divisions. That the CEO of NJNG's parent may have noted that the SRL will have the ancillary benefit of helping NJNG serve Ocean County's growing population is immaterial. Further, the PPA's contention (at pgs. 9-10) that the SRL Project is really part of some larger nefarious plot by NJNG's parent company to enrich itself at the expense of ratepayers should be rejected out of hand as what it is: unsupported conspiratorial ramblings.

system failures are such a grave concern that [the SRL is needed as a redundant feed]," (Chesterfield Br. at 8 (emphasis in original)), is flatly wrong and grossly mischaracterizes the evidence proffered by NJNG. In reality, Lynch made clear that NJNG did not simply decide on a whim to undertake an enormous and costly infrastructure project; to the contrary, Lynch explained, NJNG "noticed a trend in [its] interstate supplier which [it] feel[s] needs to be proactively addressed" because "[t]he Company believes that waiting for a system failure is bad planning and irresponsible." (Ex. P-3, Lynch Rebuttal Test. at 7:3-5.)[3] The trend to which Lynch was referring involved two actual service interruption/curtailment incidents in TETCO's interstate delivery system—the Entriken/Chambersburg compressor station failures in January 2015 and the Delmont compressor station failure during the 2014 polar vortex—both of which are detailed in NJNG's Post-Hearing Brief (pgs. 26-27).[4] In short, NJNG demonstrated that specific recent incidents involving TETCO's delivery system support NJNG's reasonable and prudent conclusion that it needs a redundant gas feed to address the very real possibility that

[3] Chesterfield contends that, in arguing the SRL Project is needed, "NJNG relies only on the testimony of its own Senior Vice President of Energy Delivery, Craig A. Lynch." (Chesterfield Br. at 22.) The PPA advances the same argument. (PPA Br. at 4-5.) That is simply untrue. As detailed above and in NJNG's Post-Hearing Brief, Lynch explains in his direct and rebuttal testimony the many concrete reasons supporting NJNG's determination that a redundant gas feed is reasonably necessary, including recent curtailment incidents. Chesterfield and the other parties attempt to dismiss Lynch as simply providing an off-the-cuff, self-serving and superficial opinion that the SRL is necessary. But as he testified during the December 7 evidentiary hearing, Lynch came to the conclusion that the SRL is necessary based on the expertise he has acquired as the person responsible, for the last thirty-one years, for the design and operation of NJNG's system. (12/7/15 Tr. at 52:17-21.)

[4] The PPA dismisses these two significant problems with TETCO's delivery system because NJNG was able to continue "to supply service without a significant interruption." (PPA Br. at 7.) But once again, simply because NJNG was able to manage the disruptions caused by those two problems in TETCO's system does not mean the Company should not proactively take steps to guard against a more severe disturbance that would leave tens, if not hundreds, of thousands of New Jersey residents without gas service for an extended period of time.

TETCO could experience a more significant problem with its delivery apparatus that would have serious consequences for NJNG's customers if that supplier remains the sole source for nearly all of the gas delivered to the Central and Ocean Divisions.

Moreover, as NJNG has repeatedly explained, the major curtailments following Superstorm Sandy, while not related to an interruption in the interstate gas supply, "demonstrated the tremendous cost of widespread curtailment." (Ex. P-3, Lynch Rebuttal Test. at 7:6-8.) Chesterfield argues that "NJNG is factually precluded from pointing to Superstorm Sandy as an instance where a redundant pipeline would have benefitted the Company and its customers."[5] (Chesterfield Br. at 8.) Leaving aside that Chesterfield's argument is factually incorrect,[6] it simply misses the point. NJNG has always acknowledged that Superstorm Sandy did not involve an interruption in the interstate gas supply. Nonetheless, Superstorm Sandy is significant because it demonstrated to NJNG the devastating impact that an extensive curtailment of service can have on its customers. In part as a result of Superstorm Sandy (particularly when considered with the Delmont/polar vortex and the Entriken/Chambersburg failures), NJNG came to realize that the risk associated with a major interruption in the delivery of gas is a very real possibility, and has proactively taken steps with the SRL Project to avoid or mitigate the impact

[5] The PPA proffers a similar argument (PPA Br. at 6-7, 8), which is meritless for the same reasons.

[6] In that regard, Chesterfield argues that "[t]he record is completely barren as to how the SRL, had it been in existence during the time of Sandy, could have improved the Company's situation. That is false. NJNG's discovery responses specifically address this issue, explaining that "each location damaged [by Superstorm Sandy] also had substantial areas downstream that were viable." (Ex. Staff-1, Response to RCR-ENG-2(b).) Thus, "[i]f additional feeds were available to those systems, the outages could have been minimized because [NJNG] would have isolated the damaged areas and kept gas flowing to the undamaged areas." (Id.) Those additional feeds are being installed as part of NJNG's NJR RISE project, which the SRL Project compliments. (Id.)

of such an event. Thus, whether the SRL would have allowed NJNG to restore gas service earlier to those areas affected by Superstorm Sandy is irrelevant.

The flaw in Interveners/Participants' argument is most evident in Chesterfield's statement that because NJNG has not yet experienced a major service curtailment resulting from a supply system failure and cannot exactly quantify the likelihood of such an event, it "has failed to show . . . that a supply interruption or system failure ***is an imminent threat*** . . . ." (Chesterfield Br. at 9 (emphasis added).) But N.J.S.A. 40:55D-19 only requires NJNG to show that the SRL Project "is reasonably necessary for the service, convenience or welfare of the public," not that it is designed to address "an imminent threat." To Chesterfield's thinking, it is not enough for NJNG to demonstrate that a major supply system failure is a realistic possibility; rather, NJNG must demonstrate that such an event is almost certain to occur imminently. Such a showing, however, would require NJNG to demonstrate not that the SRL Project is reasonably necessary, but that it is "absolutely or indispensably" necessary, which the New Jersey Supreme Court has expressly held is not the standard. In re Public Service Electric & Gas Co., 35 N.J. 358, 377 (1961).

B. The Reasonable Necessity Of The SRL Project Is Not Based On Any Need Of Or Benefit To The Joint Base.

Chesterfield devotes eight pages of its Brief to the argument that NJNG has failed to demonstrate that the SRL Project is reasonably necessary for the service, convenience or welfare of the public because it has not established that the Joint Base needs or will benefit from the SRL. (Chesterfield Br. at 10-17.) The PPA likewise spends nearly seven pages arguing that "there is no association between the function of the [Joint Base] and the proposed pipeline . . . ."[7]

[7] The PPA further contends that NJNG's purported failure to establish a need by the Joint Base for the SRL Project is somehow damaging to its application before the Pinelands Commission.

(PPA Br. at 12-18.) NJNG does not contend, however, that the SRL Project is reasonably necessary because it will serve a military purpose or need at the Joint Base or because the Joint Base will benefit from it. To the contrary, NJNG's reasonable necessity argument is grounded solely in the fact that the SRL Project will act as a major redundant gas feed for NJNG's Central and Ocean Divisions. (See NJNG Post Hearing Br. at 21-29.) As a result, Chesterfield's contention that "NJNG's Petition before the BPU hinges on whether the Project will benefit the Joint Base," (Chesterfield Br. at 13), is completely contradicted by the Petition itself, as neither the Original Petition nor the Amended Petition makes any mention of a benefit to the Joint Base when arguing that the SRL Project is reasonably necessary. (Ex. P-1, Original Petition, ¶¶ 16-17; Ex. P-2 Am. Petition, ¶¶ 18-20.)

As a result, Chesterfield's arguments that "NJNG has not demonstrated a need by the Joint Base that requires the installation of the SRL," (Chesterfield Br. at 12), and that "no studies were performed and no reports were generated which would demonstrate a need for the SRL by the Joint Base, or which would provide proof of a natural gas deficiency on the Base," (id. at 13), are entirely off target, as are similar arguments by the PPA, (PPA Br. at 12-18). Put simply, NJNG never attempted, on this Petition, to establish that the Joint Base needs the SRL. And for a good reason: the reasonable necessity of the Project is based solely on the need for a redundant gas feed for the Company's Central and Ocean Divisions.

(PPA Br. at 12-18.) That contention, aside from being untrue, is utterly irrelevant to the instant Petition, which is submitted pursuant N.J.S.A. 40:55D-19 and seeks only to exempt the SRL Project from local zoning ordinances and regulations and to designate a route for the SRL. As explained below, NJNG's Pinelands Commission application is not at issue here, and, equally important, was resolved in favor of NJNG by the Pinelands Commission.

For the same reason, Chesterfield's complaint (pgs. 10-12) about NJNG's responses to its discovery requests regarding the benefits of the SRL to the Joint Base is a make weight.[8] Because the reasonable necessity of the SRL Project is not based on any benefit to or need of the Joint Base, Chesterfield's discovery requests regarding whether, to what extent and in what manner the SRL will provide gas service to or otherwise benefit the Joint Base are irrelevant to this Petition, as is Chesterfield's motion to compel regarding those requests.

To be sure, the SRL Project will have benefits to the Joint Base, as the Base's Commander, Colonel Thaden, attested in his November 6, 2015 letter. (11/6/15 Thaden Letter, Ex. 1 to John Wyckoff's Rebuttal Test. (Ex. P-5).) But those benefits are no part of NJNG's reasonable necessity showing, and Chesterfield's attempt to discount Colonel Thaden's letter misapprehends its import. Chesterfield argues that the Board should disregard Colonel Thaden's letter because his statements regarding the potential benefits of the SRL to the Joint Base contradict NJNG's discovery responses. (Chesterfield Br. at 15-17.) Leaving aside that Colonel Thaden's letter and NJNG's discovery responses are consistent,[9] the significance of the colonel's letter—and the reason it was made part of the record—is that it makes crystal clear that the

[8] Equally irrelevant is Chesterfield's discussion of its attempt to intervene in NJNG's petition under N.J.A.C. 14:7-1.4. That petition is an entirely separate application that has no bearing on the Board's consideration of the instant Petition.

[9] While it is not relevant to the Petition, Colonel Thaden's statements regarding the potential future benefits of the SRL to the Joint Base are consistent with NJNG's discovery responses, including the statement that "[w]hether NJNG will supply additional gas service to other areas of the Joint Base is not known at this time." (Revised Response to CHES-NJSRL-84(h).)

alternative "Dancer Route" for the SRL is not feasible because of the path by which it would traverse the Joint Base.[10] (11/6/15 Thaden Letter, Ex. 1 to Wyckoff's Rebuttal Test. (Ex. P-5).)

In sum, Chesterfield's and the PPA's arguments regarding the Joint Base are misguided and provide no basis to deny the Petition.

C. North Hanover Has Presented Nothing To Contradict The Showing That The SRL Project Is Reasonably Necessary For The Service, Convenience Or Welfare Of The Public.

For the most part, North Hanover's brief simply reiterates the arguments made by its Mayor, James Durr, is his Direct Testimony. NJNG demonstrated in its Post-Hearing Brief why those arguments lack merit. For example, North Hanover continues to argue that NJNG has given "little, if any, consideration" to the impact of the SRL Project on the structures and trees in the Arneytown Historic District. But as NJNG's Post Hearing Brief demonstrated, NJNG's Alternatives Analysis took into account all of the historic structures that might be affected by the various alternative routes and specifically gave consideration to the Arneytown structures when choosing the proposed route. (NJNG Br. at 44-45 (quoting (Ex. P-5, Baker Rebuttal Test. at 2:12-3:11.) Moreover, the New Jersey Historic Preservation Office has approved the steps

[10] Chesterfield's suggestion that it did not have sufficient time to explore the veracity of Colonel Thaden's statements regarding the potential benefits to the Joint Base is as frivolous as it is irrelevant. (Chesterfield Br. at 14.) The rebuttal testimony of Barry Baker and John Wyckoff (provided to Chesterfield on November 11, 2015) indicates that the Joint Base leadership had advised that the Dancer Route was not feasible. (Ex. P-4, Baker Rebuttal Test. at 5:15-20; Ex. P-5, Wyckoff Rebuttal Test. at 6:20-7:9.) Wyckoff's rebuttal testimony also attached Colonel Thaden's November 5 letter. Further, NJNG's responses to Chesterfield's discovery also made this clear. (Ex. Staff-1, Response to CHES-NJSRL-29.)

NJNG has proposed to minimize any impact to the Arneytown structures and trees.[11] (Id. (quoting (Ex. P-5, Baker Rebuttal Test. at 3:22-4:9).)

Perhaps most importantly, NJNG has made clear throughout the entire process—including before even filing the Petition—that it is willing and eager to sit down with North Hanover municipal officials to discuss issues such as preventing damage to the Arneytown structures and any impact to First Brigadier General William C. Doyle Memorial Cemetery. (See 12/7/15 Tr. at 87:20-88:4, 89:10-18.) If North Hanover were truly interested in working cooperatively to minimize the impact of the SRL Project to the municipality, it would have designated a route pursuant to N.J.S.A. 48:9-25.4 that was both acceptable to it and NJNG and consistent with the constructability of the designated route. North Hanover instead chose to take a blanket, not-in-my-backyard approach. Nonetheless, NJNG still desires to work cooperatively with North Hanover to address and minimize any legitimate concerns its officials and citizens may have.[12]

Realizing that it cannot ground its objection to the SRL Project on the Arneytown Historic District or the Doyle Cemetery, North Hanover raises in its Post Hearing Brief a new

[11] Despite the evidence establishing that NJNG has specifically aligned the SRL to run underneath the opposite side of the road to account for the historic buttonwood trees (Ex. P-5, Baker Rebuttal Test. at 4:17-19), North Hanover insinuates that NJNG has not given that feature due consideration. But the only "evidence" to which it points as support for NJNG's purported indifference is John Wyckoff's acknowledgment that he has never dealt with trees as old as the Arneytown buttonwood trees. (North Hanover Br. at 5-6.) That Wyckoff does not have experience with the exact type of trees at issue, however, does nothing to undercut the overwhelming evidence demonstrating that NJNG has gone to great lengths to minimize the impact to North Hanover.

[12] For example, NJNG is willing to work with North Hanover to minimize any potential damage to the sandstone foundations and other unique features of the historic structures in Arneytown. (See North Hanover Br. at 4.)

issue: the "Little Quaker" cemetery. (North Hanover Br. at 1, 6.) That North Hanover would expend taxpayer resources raising concerns about the Little Quaker cemetery is surprising given that the cemetery is located in Upper Freehold Township, not North Hanover. Pursuant to N.J.S.A. 48:9-25.4, Upper Freehold designated a route through the municipality for the SRL Project and never once raised any concerns regarding the Little Quaker Cemetery. (See Ex. P-2, Am. Petition, ¶¶ 3, 15 & Ex. A, Lynch Direct Test. at 1:12-21.) Indeed, Upper Freehold was initially opposed to the Company's proposed route through that municipality, as set forth in the Original Petition. (See Ex. P-1, Original Petition, ¶¶ 24-28 (describing Upper Freehold's opposition). But because NJNG and Upper Freehold worked together cooperatively, the municipality ultimately withdrew its opposition and designated a route that was different than that originally chosen by NJNG (thus necessitating the filing of the Amended Petition). (See Ex. P-2, Am. Petition, ¶¶ 3, 15 & Ex. A, Lynch Direct Test. at 1:12-21.) During that cooperative process, Upper Freehold certainly could have raised the Little Quaker cemetery as an issue, but it did not. North Hanover's new found concerns about that feature of another municipality should be roundly rejected.[13]

[13] North Hanover also relies on Mayor Durr's entirely unsupported statement that he possesses some unidentified evidence that the grave of a Revolutionary era figure is located outside of the Little Quaker cemetery underneath the road. (North Hanover Br. at 6 (citing 12/7/15 Tr. at 119:8-15.) Even if the cemetery were located in North Hanover, that type of unsupported and self-serving rumor is not evidential and must be disregarded. Indeed, if there were credible evidence of a historic grave underneath the roadway designated for the SRL Project, the New Jersey Historic Preservation Office would undoubtedly have advised NJNG to take steps to avoid any impact to it.

D. Though Rate Counsel Misstates The Relevance Of The Project's Overall Cost To This Application, NJNG Has Presented Overwhelming Evidence That The Benefits Of The SRL Project Greatly Outweigh Its Likely Cost.

Rate Counsel argues that, on this N.J.S.A. 40:55D-19 Petition, the Board must consider the overall cost of the SRL Project when assessing whether it is reasonably necessary for the service, convenience or welfare of the public and, as a result, NJNG must demonstrate both that the cost of the SRL Project is less than alternative means of remedying the need it addresses and that the benefits of the Project outweigh the costs to ratepayers. (Rate Counsel Br. at 3, 4 & 9.) Rate Counsel contends that NJNG cannot make either of those showings until it knows with near absolute precision the cost of the SRL Project (which, of course, cannot be known at this time). Rate Counsel misapprehends the applicable legal standard.

Rate Counsel's erroneous position is based on a misreading of In re Public Service Electric & Gas Co., 35 N.J. 358 (1961) ("PSE&G"), in which the New Jersey Supreme Court set out several guiding principles for application of the standard set forth in N.J.S.A. 40:55D-19 (discussed at length in NJNG's Post Hearing Brief). Among other things, the Court held that "[a]lternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost, must be considered in determining such reasonable necessity." Id. at 377. Rate Counsel latches onto the phrase "including cost" in that statement as the basis for its contention that (a) NJNG must demonstrate that the SRL is less costly than other possible means to address the need for redundancy and that its benefits to ratepayers outweigh its costs; and (b) NJNG cannot make either showing until it can proffer the actual cost of the Project, rather than a cost estimate. But a plain reading of the Supreme Court's statement in PSE&G

makes clear that the Court was referring primarily to a comparison of the cost of the proposed route to the costs of the other alternative routes considered.

To be sure, the BPU Orders cited in Rate Counsel's Brief certainly note that the Board should consider the estimated costs of a proposed project when determining whether it is reasonably necessary for the service, convenience or welfare of the public. But none of those Orders suggests that to obtain exemption from local zoning ordinances and regulations and designation of a route, NJNG is required at this stage to proffer definitive cost figures for the SRL Project or extensive studies comparing its costs to entirely different means of creating redundancy in the Central and Ocean Divisions (assuming such alternative means are even possible).

To the contrary, in In re Petition of Public Service Electric and Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19 Re: North Central Reliability Project, BPU Docket No. EOl1050323 (June 18, 2012), the Board took no issue with the fact that the public utility provided an estimated cost with a $50 million range ($340 to $390 million). Id. at 28. Likewise, in In re Petition of South Jersey Gas Company for a Determination Pursuant to the Provisions of N.J.S.A. 40:55D-19, BPU Docket No. GO13111049 (December 16, 2015) ("South Jersey"), the Board approved a new gas transmission line even though the utility acknowledged that "the total costs may exceed the original $91 million cost estimate," and that "it is not known at this time how much the costs will exceed the original estimate" (though it was not expected to exceed the more than $145 million it would have cost to construct an alternative

project to address the supply problem at issue).[14] Id. at 49-50. In other words, the Board had no problem approving a gas transmission line despite the fact that the best forecast the utility could provide was that the actual cost of the project was expected to exceed the cost estimate by less than 60%.

In short, contrary to Rate Counsel's assertion, NJNG is not required to present final definitive cost figures for the SRL Project. By insisting that NJNG do so, Rate Counsel is attempting to convert this application under N.J.S.A. 40:55D-19 into a rate recovery proceeding. NJNG, however, made clear in answering Rate Counsel's discovery responses that it is not seeking on this Petition recovery of any costs or approval of a cost recovery mechanism:

> The current petitions before the New Jersey Board of Public Utilities ("Board") seek approval to install and construct the Southern Reliability Link ("SRL") project and for the Board to find that the SRL is reasonably necessary for the service, convenience or welfare of the public pursuant to N.J.S.A. 40:55D-19 and that the Board approve the design and construction pursuant to N.J.A.C. 14:7-1.4. The Company has not sought to recover any costs or approval of a cost recovery mechanism related to the SRL prior to its construction. As such this request is not germane to these proceedings.

(Ex. Staff-1, Response to RCR-ROR-1.) That Rate Counsel is attempting to transform this 40:55D-19 petition into a premature rate recovery proceeding is most clear from its argument that ratepayers should not be charged the full cost of installation of a 30-inch pipeline, but rather should only be charged the cost of a 24-inch pipeline. (Rate Counsel Br. at 7-9.) While NJNG has presented overwhelming evidencing supporting the need for a 30 inch pipe, the question of

[14] That an alternative solution to the problem at issue was considered in South Jersey does mean that a utility must undertake an extensive study of different solutions for every project. To the contrary, the fortuitous fact that South Jersey Gas had explored a different approach simply provided a helpful data point for analyzing the estimated costs of the proposed project.

whether ratepayers should be charged for the full cost of that pipe or the pro rata cost of a smaller pipe is simply not topical on this application.[15]

NJNG has filed a separate rate recovery proceeding, which will address whether the costs NJNG incurs in connection with the SRL Project are reasonable and prudent. But that question has no relevance on this 40:55D-19 application, which seeks nothing more than to exempt the SRL Project from local zoning ordinances and regulations and to designate a route for the Project. Indeed, it would be impossible for the BPU to address cost recovery now because NJNG will not know the actual final costs of the Project until it contracts for the work after receiving proposals from various construction firms. And as Craig Lynch's rebuttal testimony explained, NJNG cannot issue a Request for Proposals from construction firms "until a final route determination has been made by the BPU."[16] (Ex. P-3, Lynch Rebuttal Test. at 13:14-19.)

[15] To the extent it has any relevance here, Craig Lynch explained in his rebuttal testimony why a 30-inch pipe is necessary. (See Ex. P-3, Craig Rebuttal Test. at 8:14-10:12; see also Responses to RCR-ENG-21, RCR-ENG-22 and RCR-ENG-23, which explain the reasons a 30-inch pipe is necessary.)

[16] Rate Counsel fails to mention that in In Re Petition of New Jersey Natural Gas Company for Approval and Authorization to Construct and Operate the Southern Reliabilty Link Pursuant to N.J.A.C. 14:7-1.4, BPU Docket No. 15040402 (the "14:7-1.4 Petition"), it recently entered into a Stipulation of Settlement with the Company regarding its preferred route. On December 29, 2015, the Company and Rate Counsel (on behalf of all classes of utility customers in New Jersey) executed a Stipulation of Settlement stating, in part, that ""the parties agree that of the feasible buildable alternatives presented by the Company in the June 5, 2015 Petition, the preferred route proposed by NJNG represents the alternative with the least negative impacts. Therefore, the Company requests that the Board authorize the Company to construct, install and operate the SRL project's transmission line. Rate Counsel consents to this request." (¶ 14.) The Stipulation was approved by the BPU on January 27, 2016. In light of the fact that it consented to the relief requested by NJNG on its 14:7-1.4 Petition, it is surprising that Rate Counsel would argue that NJNG cannot obtain the relief requested here until it prevails on that Petition. In any event, the BPU approved the 14:7-1.4 Petition on January 27, 2016.

In any event, NJNG has proffered sufficient evidence to permit the Board to determine that the estimated cost of the SRL Project is reasonable from the perspective of New Jersey ratepayers. As an initial matter, in its Response to Rate Counsel's Discovery Request RCR-ENG-15, NJNG provided the most recent budget estimate for the SRL Project and explained the methodology used to arrive at that estimate.[17] (Ex. Staff-1, Response to RCR-ENG-15.) Rate Counsel cites to an earlier (less precise) estimate by NJNG, which the Company expressly advised was to be superseded by a new budget then being developed. (Rate Counsel Br. at 5, 6 (citing Response to RCR-ENG-7b). Given that the Response to RCR-ENG-15 provides the most recent estimate, Rate Counsel's reliance on the earlier estimate is misplaced.[18]

More importantly, in response to Rate Counsel's discovery request for all cost-benefit analyses and value-of-service studies undertaken by NJNG, the Company referred to the Report entitled "The Economic Impacts of the Southern Reliability Link," by Michael Lahr and Nancy Mantell of the Edward J. Bloustein School of Planning and Public Policy, Rutgers, The State University of New Jersey (the "Economics Report"), which is attached as Exhibit B to the Amended Petition (Ex. P-2). (Ex. Staff-1, Response to RCR-ENG-18.) As NJNG's discovery response

[17] The portion of the response to RCR-ENG-15 stating the budget estimate and explaining the methodology has been designated confidential. As a result, NJNG has not set out that information in this Reply.

[18] Moreover, because the most recent cost estimate is more closely aligned with the cost estimate prepared by Rate Counsel's expert, Edward A. McGee, Rate Counsel's argument (at pg. 6) that McGee's estimate is more reliable is immaterial. Nonetheless, it is interesting that McGee's estimate of costs is based in part on his experience in the South Jersey proceeding. (See Ex. RC-1, McGee Direct Test. at 9:6-17.) As noted above, the utility in that proceeding—just like NJNG here—provided project cost estimates, not final construction and installation costs. But while Rate Counsel chastises NJNG for utilizing such cost estimates, McGee took no issue with South Jersey's use of them. In fact, McGee bases his cost estimates in this proceeding on the estimates in South Jersey. (Id.)

explains, the Economics Report "finds that the initial construction of the SRL will have a significant positive impact on New Jersey's economy producing significant labor gains and $155 million in New Jersey gross state product." (Id.) Specifically, the Economics Report determined that the SRL Project will have the following positive economic impacts on New Jersey: (1) "470 direct and 856 indirect and induced one-time job-years;" (2) "$54.4 million direct and $60.6 million indirect and induced income;" (3) "$102.4 million direct and $233.3 million indirect and induced output;" (4) "$69.5 million direct and $85.8 million indirect and induced gross domestic product;" (5) "$9,464 thousand in business and household local taxes;" and (6) "$6,186 thousand in business and household state taxes." (Ex. P-2, Am. Petition, Ex. B at 3.) The Report noted that the total gross domestic product of $155.3 million "is slightly less than the spending for the pipeline," and thus opined that "[a]s it pays for itself, one could view the project as an income-redistribution program."[19] (Id. at 8.)

Moreover, NJNG presented evidence establishing that, with the SRL in place as a major redundant gas feed, NJNG would avoid astronomical costs in the event of a wide scale curtailment of the TETCO gas supply. As NJNG explained in its Post-Hearing Brief, if NJNG lost the TETCO feed at the Jamesburg Station in the month of January and there was no redundant feed, the resulting curtailment could affect approximately 350,000 to 400,000 NJNG customers. (Ex. Staff-1, Response to S-NJSRL-11.) In that scenario, "the direct expenses could range between $170,000,000 to 190,000,000 and take a minimum of 4 months once adequate supply again became available at the Jamesburg Station." (Id.) Critically, that direct cost

[19]Although the more recent cost estimate provided in NJNG's response to RCR-ENG-15 (which, again, is confidential) is higher than that used in the Economics Report, the point about the net positive economic benefit of the SRL Project holds true.

estimate does not include other costs and cost factors, such as "inspecting homes before they are reintroduced with gas for freeze ups or any other issue that may have occurred while the home had no heat; to re-pressurize NJNG's systems; the ability to locate adequate mutual aid during the winter peak season; or finding housing for mutual aid as they would not be able to be housed in Monmouth or Ocean Counties due to the outage." (Id.) The direct cost estimate also "does not include any indirect costs related to social services for NJNG's customers like hospitals, fire, police, schools, etc., who are impacted by the outage or the loss of economic activity in New Jersey as a result of this event." (Id.)

Thus, contrary to Rate Counsel's assertion, NJNG has presented more than sufficient evidence regarding both the estimated cost of the SRL Project and the enormous benefits resulting therefrom to permit the Board to meaningfully consider the costs of the Project and determine that it is reasonably necessary for the service, convenience or welfare of the public.

E. The Board Should Reject The PPA's Contention That The SRL Will Not Provide Redundancy For NJNG's Existing System.

The PPA contends that the SRL Project "will not in fact provide the claimed redundancy because the existing network upstream of SRL's end point in Ocean County is already redundant." (PPA Br. at 9.) In support of that proposition, the PPA appends to its brief a report authored by an individual named Greg Lander of Skipping Stone (a report NJNG has never before seen). (Id.)

In an Order dated July 21, 2015, however, the Board denied the PPA's application to intervene in this Proceeding, and instead granted it only Participant status, expressly limiting its participation to arguing orally and filing a statement or brief. As the Administrative Code explains, participation is "the process by which a non-party may, by motion, be permitted to take

limited part in a proceeding." N.J.A.C. 1:1-2.1; see N.J.A.C. 1:1-16.6(c) (setting out the limited rights of Participants). Thus, as a Participant, the PPA does not have the right to introduce evidence, such as the Lander report, into the record.

The Board rejected a virtually identical attempt by the PPA to smuggle evidence into the record in South Jersey, concluding that by appending purported expert reports to its post hearing brief, the "PPA is attempting to import new evidence into the record, when the authoring witnesses have not been qualified to testify nor been subject to cross-examination." South Jersey, BPU Docket No. GO13111049 (December 16, 2015) at 41. The BPU refused to give the reports any evidential value, reasoning as follows:

> As a participant, PPA was granted the rights to argue orally and submit a brief. N.J.A.C. 1:1-16.6(c). PPA exercised both of those rights but accompanied its brief submissions with declarations intending to place additional documents and studies into the record. The brief is a written presentation of legal argument. Facts intended to be relied on which do not already appear of record and which are not judicially noticeable are required to be submitted by way of affidavit or testimony. See Celino v. Gen. Accident Ins., 211 N.J. Super 538, 544 (App. Div. 1986). Only parties, including those who have been granted intervener status under N.J.A.C. 1:1-16.1, have the right to present testimony at an evidentiary hearing on the issues to be determined through the hearing. As a participant, PPA does not have the right to introduce testimony into the record, and certainly not by way of its brief.
>
> N.J.S.A. 52:14B-10(d) directs that a decision in a contested case must be based only on the evidence in the record. Any of the documents which the PPA seeks to interject into this proceeding that are not subject to official notice by the Board, as well as the same kind of documents submitted by SJG with its response, shall not be considered as evidence in this proceeding. The Board will consider them as public comments but afford them no evidentiary value.

Id. The Board should similarly give no evidential value to Lander's report, and should thus reject the PPA's argument, which is based solely on that Report.[20]

Even if the PPA were permitted to submit evidence, Lander's report could be not be considered by the Board because Lander is not qualified to offer an expert engineering opinion regarding NJNG's natural gas delivery system. As his curriculum vitae indicates, Lander does not hold an engineer degree, but rather a Bachelor of Arts degree from Hampshire College. (PPA Brief, Ex. B.) And the biography portion of his CV acknowledges that his work experience is in the area of "Strategic Consulting in the mergers and acquisitions arena with numerous clients within the energy industry." (Id.) In short, Lander does not have sufficient knowledge, learning or experience to permit him to be qualified on the highly technical engineering issue of whether the SRL Project will meet NJNG's redundancy needs.

F. The Question Of Whether The SRL Project Complies With The Requirements Of The Pinelands Comprehensive Management Plan Is Not Before The Board.

In its Brief, the PPA argues that the BPU cannot "approve" the SRL Project because it violates the CMP. (PPA Br. at 27-33.) Commissioner Solomon, however, already held when denying the PPA's application to intervene (and granting it participant status) that "the question of whether the [SRL] Project complies with the requirements of the CMP is not before the Board" on the Petition. (7/21/15 Order at 7.) As Commissioner Solomon explained "under N.J.SA 40:55D-19, the Board is required to determine whether the Project is 'reasonably necessary for the service, convenience or welfare of the public' weighing the factors described

[20] For the same reason, the Board should not give any evidential value to the other exhibits appended to the PPA Brief (other than those already properly in the record, such as Exhibit I to the PPA Brief).

above" and "[i]f the Board finds the Project reasonably necessary, it can grant relief from compliance with rules and laws passed under the authority of the MLUL." (Id.) "In contrast," Commissioner Solomon continued, "the CMP is adopted by the Pinelands Commission under the authority granted by N.J.SA 13:18A-1 to 29 which is implemented through N.JAC. 7:50." (Id.) As a result, Commissioner Solomon denied the PPA intervener status because she was concerned that allowing it to intervene would "result in unnecessary delay and substantial unneeded confusion by focusing on matters outside the jurisdiction of the Board." (Id.) In short, Commissioner Solomon has correctly decided that compliance with the CMP is an issue for the Pinelands Commission, not the BPU on this Petition.

On April 9, 2015, NJNG submitted an application (File No. 2014-0045.001) to the New Jersey Pinelands Commission for a determination that the SRL Project conforms to the requirements of the CMP. (Ex. P-2, Am. Petition, ¶ 21.) On December 9, 2015, the Pinelands Commission issued a Certificate of Filing as a result of NJNG's completion of its application. The Certificate of Filing does not indicate that the Project is in any way inconsistent with the CMP. See N.J.A.C. 7:50-4.34 (authorizing the Certificate of Filing to "identify any inconsistencies of the proposed development with the standards of the [CMP]").) It is indisputable, therefore, that the SRL Project is consistent with the CMP.

* * *

In conclusion, the Interveners and Participants have failed to undercut the overwhelming showing in NJNG's Post Hearing Brief that the SRL Project is reasonably necessary for the service, convenience or welfare of the public served by NJNG.

II. THE JCP&L ROW ROUTE IS NOT FEASIBLE BECAUSE IT TRAVERSES PRESERVED FARMLAND.

In its Post Hearing Brief, NJNG demonstrated that the JCP&L ROW Route is not feasible because it would traverse preserved farmland that NJNG is prohibited as a matter of law from utilizing. In fact, the New Jersey State Agriculture Development Committee ("SADC") has confirmed that the Agriculture Retention and Development Act prohibits the SRL Project from crossing preserved farmland along the JCP&L ROW Route. (Ex. Staff-1, Response to S-NJSRL-10d.) Even Burlington County—both at the December 7, 2015 evidentiary hearing and in its Post Hearing Brief—agreed that the JCP&L ROW Route is not feasible because NJNG is prohibited by statute from using preserved farmland. In fact, both the New Jersey Department of Environmental Protection ("DEP") and the Office of Governor's Counsel so advised Burlington County:

> The [DEP] and the Office of Governor's Counsel informed the County that because that route crossed preserved farmland it was prohibited as a matter of law pursuant to New Jersey Statutes and the Garden State Preservation Trust. The Director of the Division of Law advised Governor's Counsel that the project would be development, and even though the construction would take place underground on existing utility easements and co-locate with another utility, New Jersey Law prohibits development on preserved farmland.

(Burlington County Br. at 2-3.)

But even though the SADC, the DEP, the Office of Governor's Counsel and Burlington County all agree with NJNG that the SRL cannot as a matter of law traverse preserved farmland and thus the JCP&L ROW Route is not feasible, Chesterfield, North Hanover and the PPA

continue to dispute that fact.[21] For example, Chesterfield argues that "no law has ever actually been cited by any party to these proceedings" for the proposition that the SRL Project cannot traverse the preserved farmland along the JCP&L ROW Route. (Chesterfield Br. at 25.) That is untrue, as NJNG specifically cited to the Agriculture Retention and Development Act in its Post Hearing Brief.

To elaborate, preserved farmland (which many of the properties along the JCP&L ROW Route indisputably are) contain agricultural preservation easements issued by the SADC pursuant to the New Jersey Agriculture Retention and Development Act, N.J.S.A. 4:1C-11, et seq. ("ARDA"). Such easements statutorily restrict landowners' rights to use, construct, or develop the property for anything other than agricultural use. See N.J.S.A. 4:1C-24(a)(3) (providing that a qualifying landowner "may enter into an agreement to convey a development easement on the land to the [applicable agricultural] board"). Pursuant to N.J.S.A. 4:1C-32, "any development for nonagricultural purposes is expressly prohibited, [and the easements] shall run with the land and shall be binding upon the landowner and every successor in interest thereto." Violations of easement restrictions allow the SADC to institute, in the name of the State, proceedings to enforce the conditions or restrictions on the use and development of the land encumbered by such development easement. See N.J.S.A. 4:1C-33.

Thus, SADC agricultural deed restrictions imposed pursuant to the ARDA ensure that (a) the subject property is permanently preserved for farming and agriculture; and (b) no landowner (or municipality) can elect to construct non-agricultural development, such as natural gas transmission lines, on the preserved lands. Such restrictions remain in force for all future owners

[21] No parties dispute that the "Dancer Route" through the Joint Base is not feasible.

or future easement holders in perpetuity. Thus, there can be no doubt that pursuant to the provision of the ARDA, NJNG is prohibited as a matter of law from using the preserved farmland along the JCP&L ROW Route for the SRL Project. Indeed, as detailed in NJNG's Post Hearing Brief, that assessment was confirmed by the SADC in its July 2015 "Landowner Guide to SADC Procedures for the Condemnation of Preserved Farmland," which states that (a) "[b]ecause development/expansion of utility facilities constitutes use and development of the farm for nonagricultural purposes, neither the landowner nor the grantee of the easement can simply 'allow' utility companies to cross preserved farmland for purposes of developing utility infrastructure;" and (b) "[i]t is important to note that not all utility projects are capable of obtaining the court's approval for a taking. For those that are not—such as electric utility and intrastate natural gas pipeline projects—the utility company cannot cross a preserved farm." (Ex. Staff-1, Response to S-NJSRL-10d.)

In its Brief, the PPA contends that the SADC, and by extension the DEP, the Office of Governor's Counsel and Burlington County, are wrong because "state law permits the condemnation of an easement on preserved farmland with the governor's consent, N.J.S.A. 4:1C-19; 4:1C-25, and gives utilities like NJNG condemnation powers of the state for duly approved pipeline ROWs, N.J.S.A. 48:3-17.6; N.J.S.A. 48:10-1 and 1.1." (PPA Br. at 22.) The PPA misunderstands the condemnation powers granted under the ARDA and public utility eminent domain statutes. Further, even if the PPA were correct on the law, which it is not, the Governor, through his Counsel and the Attorney General's Office, has indicated that he will not consent.

There can be no doubt, therefore, that pursuant to the clear provisions of the ARDA, NJNG is prohibited as a matter of law from using preserved farmland for the SRL Project.[22] And because (as no party disputes) the JCP&L ROW Route would require NJNG to traverse preserved farmland, it is not feasible. Thus, none of the Interveners or Participants has presented an argument that even remotely calls into question the conclusion that the route proposed by NJNG for the SRL is the best available.[23]

[22] Given it is indisputable that NJNG is prohibited as a matter of law from using preserved farmland parcels for the SRL, the parties' remaining arguments regarding the JCP&L ROW Route are irrelevant. For example, Chesterfield and the PPA complain that Barry Baker and AECOM did not adequately review the easement agreements or walk the actual easements related to the JCP&L ROW Route. (Chesterfield Br. at 25-27; PPA Br. at 21.) Although untrue, these contentions are of no moment because NJNG is prohibited from using the preserved farmland that is part of that proposed route. Thus, regardless of whether AECOM spent enough time scrutinizing the easement agreements or physically inspecting the actual easements, NJNG cannot use the preserved farmland. Similarly, the PPA complains that the normalization and weighting methodology employed by AECOM to compare the various alternative routes was intentionally biased so as to make the JCP&L ROW Route seem more unattractive. The JCP&L ROW was included as part of one of the original batch of alternatives and, therefore, AECOM had already devised its methodology prior to any proposal made by the towns or County. Route F, which was proposed by the towns and County, utilized the JCP&L ROW but arrived at the entrance of the ROW by a different means (Route 68, a state road). But in any event, it simply does not matter because the JCP&L ROW Route was not feasible as a matter of law. Finally, Chesterfield, North Hanover and the PPA all, quite oddly, fault Baker for relying on NJNG's attorney's representations that the SRL is prohibited by law from traversing preserved farmland. (Chesterfield Br. at 25-26; North Hanover Br. at 7; PPA Br. at 20-21.) But it is entirely appropriate for a non-lawyer engaged by a company to rely on the company's lawyers on such matters, especially when (as here) the lawyer's assessment of the law is correct.

[23] In an effort to avoid that undeniable conclusion, the PPA notes that the proposed route will run through two Superfund sites on the Joint Base. (PPA Br. at 18-19.) But the PPA ignores that AECOM's Alternatives Analysis took those and eight other Superfund sites into consideration. (See Alternatives Analysis at 25, 35 and Figure 4-1 (Exhibit 2 to the direct testimony of Barry A. Baker, which is Exhibit C to the Original Petition. (Ex. P-1).) Despite the existence of those two Superfund sites, the Alternatives Analysis led AECOM to the correct conclusion that the proposed route is the best one available.

III. THE BOARD SHOULD DECLINE BURLINGTON COUNTY'S ATTEMPT TO UNDERMINE THE SRL PROJECT THROUGH THE ADOPTION OF POST HOC ZONING REGULATIONS IN THE GUISE OF ROAD OPENING POLICIES AND PROCEDURES.

In its Post-Hearing Brief, Burlington County asks that NJNG be "required to abide by and satisfy the Burlington County Board of Chosen Freeholders Policies, Procedures and Specifications for Road Occupancy, Road Openings and Driveway Access" (the "Road Opening Policies"). (Burlington County Br. at 5.) The Road Opening Policies to which the County refers are, as the County makes clear, zoning regulations. In arguing that the Board should order NJNG to comply with those regulations, the County cites New Jersey Natural Gas Co. v. Borough of Red Bank, 438 N.J. Super. 164 (App. Div. 2014), for the proposition that "the New Jersey Legislature never denied governing bodies the ability to exercise ***their traditional zoning powers*** simply because a public utility was involved." (Burlington County Br. at 4 (emphasis added).)

NJNG does not dispute that uncontroversial statement of law. But as this proceeding reflects, NJNG has not asked this Board to exempt it from zoning regulations, including the post hoc zoning attempt reflected in the Road Opening Policies, merely because a utility is involved. To the contrary, this entire, hotly-contested proceeding has been devoted to resolving the question of whether NJNG should be exempted from the zoning prerogatives of the various concerned public entities based on the need for the SRL Project and the propriety of the route NJNG has chosen for that Project.

That the County took the extraordinary step of adopting the Road Opening Policies itself makes clear that NJNG has met its burden for winning exemption from those zoning prerogatives. The Board of Chosen Freeholders adopted those zoning regulations on December

28, 2015—after admitting at the December 7, 2015 evidentiary hearing both that the SRL Project is reasonably necessary and that there are no viable alternatives to NJNG's proposed route for the SRL—in a transparent, last-ditch effort to undermine that Project. One need look no further than the extraordinary breadth of those regulations themselves, which purport to grant the County absolute discretion to deny road opening permits, dictate the manner in which road construction projects proceed, and make it impossible for projects to proceed at all, (Burlington County Br., Ex. A), to divine their obstructive intent. Indeed, the regulations go so far as to state, "The County Engineer and/or the Board of Chosen Freeholders, at their discretion, may deny an application for a permit and/or revoke an issued permit in the interest of public safety." (Burlington County Br., Ex. A, § 4, ¶ 5.) They also state that, as to any permit application, "[t]he County Engineer reserves the right to require plans or drawings to be prepared by a Professional Engineer licensed in the State of New Jersey" and "may require that the plans depict existing conditions including right-of-way limits as prepared by a Professional Land Surveyor licensed in the State of New Jersey." (Id., § 3, ¶¶ 6-7 (emphasis).) Further, the Policies vest the County Engineer with discretion to "require the applicant to submit [with its permit application] detailed staging plans signed & sealed by a Professional Engineer licensed by the State of New Jersey." (Id., §3, ¶ 13.) In fact, the revised Policies also give the County Engineer the right to dictate where within the County right-of-way a construction project is located. (Id., § 10, ¶ 11 ("The permit holder shall occupy and/or open no greater part of the County right-of-way than shall be reasonably necessary as determined by the County Engineer.").) In sum, the revised Policies vest Burlington County with broad discretion to (1) force NJNG to submit extremely detailed and time consuming—and completely unnecessary (and often impossible)—plans and drawings

with its permit application; (2) dictate where and in what manner the SRL will be placed within the County right-of-way (a function squarely within the BPU's authority);[24] and (3) deny outright NJNG's permit applications based on unspecified "safety concerns."

This overt attempt to accomplish by indirection that which the County could not do directly should be promptly turned away. NJNG has met its burden in every particular, and the Board should roundly reject the County's attempt to effect an end-around this proceeding and the facts conclusively established herein to defeat the SRL Project.

CONCLUSION

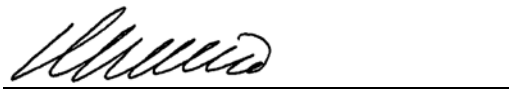
For the reasons set forth above and in the Post-Hearing Brief, NJNG respectfully requests that the Board (a) determine that the SRL Project is necessary to maintain system integrity and reliability, supports Governor Christie's 2011 EMP, and is reasonably necessary for the service, convenience or welfare of the public; (b) order that the zoning, site plan review and all other Municipal Land Use Ordinances and Regulations promulgated under the auspices of the MLUL shall not apply to the SRL Project; (c) designate the route for the SRL Project as described in the Petition; and (d) authorize the Company to construct, lay, maintain and use facilities, conductors, mains and pipes, with the appurtenances thereto, in, through and beyond the public streets, roads,

[24] Significantly, the Road Opening Policies also provide that (a) "[t]he engineering, design, construction plans and location/placement of all utilities shall be as directed by the County Engineer;" and (b) "[t]he installation of above ground equipment/appurtenances (excluding utility poles) within the County right-of-way is strictly prohibited and the installation of any such structures requires separate written approval from the County Engineer." (Id., § 20, ¶ 3(a)-(b).) The County, however, has no authority to regulate the engineering, design, construction and placement of utilities and their above-ground appurtenances; those issues fall under the BPU's authority.

highways and/or places of the counties and municipalities described herein, for the purpose of transmitting through the same natural gas for use in its business.

Dated: January 29, 2016
Chatham, New Jersey

MARINO, TORTORELLA & BOYLE, P.C.

By: 

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