



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. PINELANDS PRESERVATION ALLIANCE’S RESPONSE TO NJNG’S POST-HEARING BRIEF .....	1
A. Unsubstantiated Possibilities And Hypotheticals Do Not Provide A Rational Basis For Imposing Massive Costs On Ratepayers, Communities And The Pinelands.....	1
B. The SRL Does Not Comply With The CMP .....	2
C. NJNG’s Petitions And Discovery Responses Demonstrate That The SRL Is Not Associated With The Functions Of JB MDL, Contrary To Its Submissions To The Pinelands Commission And The Assumptions Of The Base Commander .....	5
D. <u>N.J.S.A. 40:55D-19</u> Does Not Authorize BPU To Negate Compliance With The Pinelands CMP Through Municipal Land Use Procedures And Ordinances .....	8
CONCLUSION.....	9

**I. PINELANDS PRESERVATION ALLIANCE’S RESPONSE TO NJNG’S POST-HEARING BRIEF**

**A. Unsubstantiated Possibilities And Hypotheticals Do Not Provide A Rational Basis For Imposing Massive Costs On Ratepayers, Communities And The Pinelands**

New Jersey Natural Gas (hereinafter “NJNG” and the “Company”) relies on nothing more than possibilities and hypotheticals in support of the SRL – arguments that are nothing more than scare tactics. NJNG’s opening brief reinforces the fact that the Company never undertook a genuine study of transmission-system failure scenarios and the most cost-effective means of addressing each. Instead, NJNG merely cites irrelevant past experiences and states, “the customers in the Central and Ocean Divisions – and, in particular, those at the southern end of NJNG’s system, in Ocean, Burlington and Southern Monmouth counties - **could** be adversely affected by a supply interruption or system failure....” (See NJNG Brf. at p. 3)(emphasis added). It is especially ironic, and damning, that NJNG presents only hypotheticals to support its case when it refused to answer numerous discovery requests on the basis that it could not address such “hypothetical scenarios”! (See, e.g., NJNG Responses to CHES-NJSRL-81, -83, -95, -99).

Simply using the term “Reliability” in a project’s title does justify it as reasonably necessary or even appropriate for serving the public. The continued reference to Hurricane Sandy does not make the case for this project; on the contrary, it helps show that SRL is not necessary. Hurricane Sandy did vast damage to New Jersey and caused \$65 billion in damage overall, making it the second-costliest weather disaster in U.S. history behind only Hurricane Katrina according to the National Oceanic and Atmospheric Administration (NOAA). Yet it did no damage at all to NJNG’s (or any other utility’s) gas transmission system. The other examples of supply interruptions NJNG presents are also unavailing as they show only that NJNG’s existing system is sufficiently resilient in terms of supply and transmission for realistic scenarios.

NJNG, strikingly, **does not claim that its existing system could not handle** any or all of the hypothetical situations it discusses.

Finally, NJNG cannot explain away the fact that its existing redundancies in its supply and transmission system are already highly redundant, with multiple supply sources, backup systems, and transmission lines already built and paid for. As pointed out in Pinelands Preservation Alliance's ("PPA") post-hearing brief, the discovery in this matter demonstrates unequivocally that NJNG has been able to provide service without any substantial issues for the last sixty (60) years. NJNG has been able to address any problems with its system adequately through repairs or use of Liquefied Natural Gas. (See NJNG Responses to RCR-POL-7 and -8; see also Prepared Rebuttal Testimony of Craig Lynch at T7:15-23). No real data has been presented by the Company, and it continues to rely upon possibilities and skewed hypotheticals. (See NJNG Response to S-NJSRL-11).

By the logic espoused by NJNG, natural gas utility companies should all place additional pipelines in the ground just in case all their existing pipelines, backup procedures (such as LNG) and system response procedures fail. Granting the instant Petition would give a green light to every natural gas company to artificially inflate its rate base by installing large capacity "reliability" lines with no genuine need.

#### **B. The SRL Does Not Comply With The CMP**

NJNG submits that the "SRL Project complies with the CMP" because the Pinelands Commission issued a Certificate of Filing on December 9, 2015. (See NJNG Brf. at p. 10). This statement is incorrect. First and foremost, the Certificate of Filing specifically states, "This Certificate of Filing **is not an approval.**" (See Exhibit "Q" attached to PPA's Post-Hearing Brf. (emphasis added)). The CMP regulations make clear that Certificates of Filing are only findings

of completeness, not approvals, and represent one step along the way of Pinelands Commission review for compliance with the CMP's procedural and substantive standards. (See N.J.A.C. 7:50-4.34). Furthermore, the Certificate of Filing in this case provides:

### **CONDITIONS**

1. No development shall occur until either the Commission staff issues a letter advising that any municipal or county approvals or permits may take effect or, if municipal or county permits or approvals are preempted by State laws or regulations, a determination is made under the "Coordinating Permitting with State Agencies" provisions of the Pinelands Comprehensive Management Plan (CMP, N.J.A.C. 7:50-4.81-4.85) that any State approval or permit is consistent with the minimum standards of the CMP.
2. Prior to any determination in accordance with Condition 1, above, the applicant shall provide documentation to the Commission from an appropriate agency, such as the USEPA or the New Jersey Department of Environmental Protection, that development of the proposed natural gas main will not affect any remediation activities occurring along the proposed natural gas main route on JB MDL.
3. Prior to the construction of any portion of the proposed development which will result in the disturbance of any wetland area, a Freshwater Wetland Permit shall be obtained pursuant to the New Jersey Freshwater Protections Act.

(See Exhibit "Q"). None of these conditions have been met.

The preferred route, as discussed at length in PPA's original brief, fails to account for the environmental impacts of coming into contact with contaminated groundwater located on the JB MDL. As such, if the Pinelands Commission rejects the preferred route because the USEPA or the New Jersey Department of Environmental Protection finds that the SRL will affect any remediation activities occurring along the route through the JB MDL, the BPU will have to review additional alternatives. Any decision by the BPU should be tabled until such a determination is made as a premature determination may result in a waste of the BPU and all

interested parties time and resources. It is in the interest of the BPU to be fully informed as to the preferred route.

Moreover, the Pinelands Commission requires a Freshwater Wetland Permit pursuant to the Wetlands Protection Act prior to any construction for the SRL. (See id.). Again, the BPU should have this information prior to any determination.

NJNG states it “has obtained or in the process of obtaining all approvals necessary for the SRL Project.” (See NJNG Brf. at p. 9). However, the following shows that nothing more than discussions have taken place:

NJNG has met with the DEP to discuss its LURP application, which includes, for the portions of the SRL Project under DEP Land Use Regulation jurisdiction, (a) either a Freshwater Wetlands General Permit or Individual Permit, pursuant to N.J.A.C. 7:7A; (b) confirmation of field wetlands delineations; (c) a Coastal Area Facilities Review Act (“CAFRA”) application, pursuant to N.J.A.C. 7:7; and (d) verification of Flood Hazard Area Permits-by-Rule, pursuant to N.J.A.C. 7:13. (Id., ¶ 22) These discussions have also addressed Threatened and Endangered Species protection, and Archeological issues (Id.)

\* \* \*

Further, the portion of the route that passes through the Pinelands will require approval from DEP and the New Jersey Pinelands Commission, including (a) a Certificate of Filing; (b) Freshwater Wetlands General Permit or Individual Permit; (c) a Flood Hazard Area Control Act Permit; (d) a CAFRA Individual Permit; (e) and a Certificate of Appropriateness.

(See NJNG Brf. at pp. 9-10).

Based on the above, all the record indicates is that NJNG has had discussions with various agencies. The issuance of the Certificate of Filing clearly does not confer a blanket approval of all the conditions required for the preferred route. The BPU has the daunting task of trying to determine whether the preferred route is the best route available without the benefit of even knowing if the route is possible.

NJNG continues to balk at any mention of using the JCP&L ROW due to a “fatal flaw” that bars development or operation of any non-farming activities on designated lands. However, the preferred route itself has at least one, and likely several, “fatal flaws” due to the Pinelands CMP and other environmental protections requirements which remain unaddressed.

**C. NJNG’s Petitions And Discovery Responses Demonstrate That The SRL Is Not Associated With The Functions Of The JB MDL, Contrary To Its Submissions To The Pinelands Commission And The Assumptions of the Base Commander**

The Company’s entire application submitted to the Pinelands Commission is based on a claim that the SRL will benefit and is associated with the functions of the Joint Base McGuire-Dix-Lakehurst (“JB MDL”). The Certificate of Filing, for example, states:

The applicant has represented that New Jersey Natural Gas currently maintains a natural gas distribution system throughout the Lakehurst portion of Joint Base McGuire-Dix-Lakehurst (JB MDL). The applicant has further represented that the proposed natural gas main will be associated with the function of the JB MDL by providing energy redundancy to the Lakehurst portion of JB MDL.

(See Exhibit “Q” at Attachment B attached to PPA’s Post-Hearing Brf.). In its BPU filings, however, NJNG makes clear this claim is untrue, and the pipeline is not associated with the functions of JB MDL.

As previously shown by PPA and other parties, the record is replete with evidence that the SRL is not associated with the function of the JB MDL, and the record is devoid of any basis to find it is associated with the functions of the base. Key facts regarding the SRL’s relationship to the JB MDL include:

1. Upon construction, absolutely no natural gas will flow from the SRL to the Lakehurst section (or any other section) of the JB for its use or benefit. (See NJNG revised discovery response to CHES-NJSRL-84(a) through (i)).
2. NJNG has no changes or additions planned for the SRL in at least the first five years of operation. (See NJNG Response to CHES-NJSRL 101b);

3. There has been no determination as to whether, where or when a district regulator station might be installed along the SRL to provide an indirect backfeed capability by which gas could move into the existing distribution system within the JB MDL. (See NJNG discovery response to RCR-ENG-19). Nothing in the pending petition requires such changes to the Company's system or ensures they will ever take place.
4. SRL is designed to transport vastly more gas than JB MDL could ever use, and the base has recently determined that, in any case, it has no need of additional gas supplies. A "Final Environmental Assessment of Installation Development at Joint Base McGuire-Dix-Lakehurst, New Jersey" dated February 2014, explained that the natural gas supply to the Lakehurst area "is a non-interruptible system" and "supply capacity is not considered an issue for future growth", and concluded that the base's natural gas facilities are adequate. (See Exhibit "K" attached to PPA's Post-Hearing Brf. at pp. 3-43 and 3-47).
5. JB MDL's existing supplies are secure. A "Final Environmental Assessment for the Central Issue Facility at Joint Base McGuire-Dix-Lakehurst, New Jersey" dated May 2013, the JB MDL concluded that under the terms of its arrangements with PSE&G, "the chance of a service interruption is precluded." (See Exhibit "L" attached to PPA's Post-Hearing Brf. at p. 3-19).
6. The idea of using a route through the base arose solely as an afterthought in order, the Company thought, to make it easier to obtain Pinelands Commission approval. As shown by the numerous emails cited in PPA's original brief, NJNG struggled to invent ways in which the base could use the pipeline. In the end, they could find none and have settled for the proposition that JB MDL will merely benefit like other customers from having a redundant, backup system in case of hypothetical catastrophic failures.

It is now clear that the commander of JB MDL premised the letter that NJNG touts in support of SRL on the mistaken premise that SRL would feed needed gas into the Lakehurst section of the base – indeed, that SRL would become the primary source for the Lakehurst section's gas. NJNG, in support of its Petition, submitted the Prepared Rebuttal Testimony of John B. Wyckoff, which attached the November 6, 2015 letter of current Joint Base Commander, Col. Frederick D. Thaden wherein the Colonel states:



The project provides a primary benefit of natural gas supply 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. **The majority of the gas consumed by the installation will flow via the new pipeline, if completed.**

(See Exhibit “I” attached to PPA’s Post-Hearing Brf.)(emphases added). NJNG’s filings in the present matter directly contradict and negate these statements or assumptions on the part of the base commander.

NJNG cannot and does not state in its Petition that the SRL will provide “direct service” to the base, and only provides a vague response in discovery that it “anticipate[s] the future installation of a district regulator station along the SRL to provide a backfeed into the existing distribution system within the Joint Base to improve the overall reliability and resiliency of that system. Location and design have not yet been determined.” (See NJNG’s discovery response RCR-ENG-19). Even if NJNG included the above “anticipated” additions to the Project in its Petition, which it did not, such changes would only be able to provide service to the Lakehurst section of the base if NJNG prevented gas from flowing north to south as it currently does to serve Ocean County customers because SRL is downstream of the base connection. So unless the north-south system fails, the anticipated use of “backfeeding” gas into the base would not be utilized. Such a catastrophic failure is highly unlikely, if not impossible, but in any case, such use of the SRL still directly contradicts Colonel Thaden’s premise that SRL will, once constructed, be the primary source for the base’s gas supply to the Lakehurst facilities.

In sum, the BPU must find that NJNG has not demonstrated a reasonable necessity for SRL in order to serve the JB MDL, but has in fact shown there is no such necessity.

**D. N.J.S.A. 40:55D-19 Does Not Authorize BPU To Negate Compliance With The Pinelands CMP Through Municipal Land Use Procedures And Ordinances**

NJNG submits that N.J.S.A. 40:55D-19 “authorizes the Board to exempt a public utility’s development that spans multiple municipalities from local ordinances and regulations if the Board deems the development ‘reasonably necessary for the service, convenience or welfare of the public’”, citing In re Public Serv. Elec. & Gas Co., No. A-4536-09T3, 2013 N.J. Super. Unpub. LEXIS 304 (App. Div. 2013). (See NJNG’s Brf. at pp. 18-19). NJNG goes on to explain the logic set forth by the court in Petition of Monmouth Consol. Water Co., 47 N.J. 251 (1966), which sets forth the underlying policies of N.J.S.A. 40:55D-19 albeit under its predecessor statute. (See NJNG’s Brf. at p. 19). The court noted that “The lawmakers knew that if the zoning power of a municipality were paramount, it would probably be exercised with an eye toward the local situation and without consideration for the best interests of the consumers at large in other communities whose convenience and necessity require service.” Petition of Monmouth Consol. Water Co., 47 N.J. at 258.

NJNG’s argument about the purposes and terms of N.J.S.A. 40:55D-19 support PPA’s position that this section of the Municipal Land Use Law does not authorize preemption and avoidance of the municipal procedures and standards incorporated into the local ordinances by command of the federal and state Pinelands Acts and the CMP. These Pinelands-based provisions incorporate the **regional** land use plan which represents a fundamental policy of the State of New Jersey, and provide a mechanism to ensure the “continued, uniform, consistent protection of this area.” (National Parks and Recreation Act of 1978, 16 U.S.C. § 471i(f)(4) and (8); see also Pinelands Protection Act, N.J.S.A. 13:18A-8e. and i., and -12b).

The exemption power granted BPU by N.J.S.A. 40:55D-19 does not apply to Pinelands-based ordinances, but by its own terms only addresses local ordinances to the extent they are “made under authority” of the Municipal Land Use Law. This makes sense, since N.J.S.A. 40:55D-19 does not, and cannot, negate the regional protection scheme of the Pinelands Protection Act and CMP. The New Jersey Pinelands Commission has primary responsibility for planning in the Pinelands, and it developed the CMP as a blueprint for land use in the area. Gardner v. N.J. Pinelands Comm'n, 125 N.J. 193, 201 (1991). Moreover, N.J.S.A. 40:55D-40.7 provides in pertinent part:

a. Nothing in this act shall be construed to modify the provisions of the “Pinelands Protection Act,” P.L.1979, c. 111 (C. 13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the “National Parks and Recreation Act of 1978” (Pub.L. 95-625).

Thus, BPU does not have the legal authority to exempt NJNG from the strict procedures and land use requirements of the Pinelands Protection Act and the CMP which are incorporated into municipal ordinances in order to ensure the “continued, uniform, and consistent protection of the pinelands area ....” (See Pinelands Protection Act, N.J.S.A. 13:18A-8i.)

### **CONCLUSION**

For the foregoing reasons, the Board of Public Utilities should deny the Petition of New Jersey Natural Gas for a determination pursuant to N.J.S.A. 40:55D-19.

Respectfully submitted,

**LAW OFFICES OF PAUL LEODORI, P.C.**

By: \_\_\_\_\_

  
TODD M. PARISI

Dated: January 29, 2016