

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF : BPU DOCKET NO. **GO13040339**
SOUTH JERSEY GAS COMPANY :
REQUESTING THAT THE BOARD OF : PETITION
PUBLIC UTILITIES ENTER INTO A :
MEMORANDUM OF AGREEMENT :
BETWEEN THE BOARD OF PUBLIC :
UTILITIES AND THE NEW JERSEY :
PINELANDS COMMISSION ALLOWING :
A PORTION OF A PIPELINE TO :
TRAVERSE THE PINELANDS :

TO THE HONORABLE COMMISSIONERS OF THE BOARD OF PUBLIC UTILITIES:

South Jersey Gas Company (hereinafter referred to as "South Jersey" or the "Company"), a public utility corporation of the State of New Jersey, with its principal office at One South Jersey Plaza, Folsom, New Jersey 08037, hereby submits this Petition requesting that the Board of Public Utilities (the "BPU" or "Board") enter into a memorandum of agreement (the "MOA") by and between the Board and the New Jersey Pinelands Commission (the "Commission") permitting a portion of the proposed twenty-four inch natural gas pipeline ("Pipeline") required to serve the B.L. England electrical generation plant at Beesleys Point, Upper Township, Cape May County to traverse approximately eleven miles of Pinelands Forest Management Area, beneath existing roads and public rights-of-way ("ROW"). In furtherance of this request, South Jersey requests that the BPU authorize and direct its Secretary to execute the MOA, when finalized. In support thereof, South Jersey states as follows:

I. THE PETITIONER AND RC CAPE MAY HOLDINGS, LLC

- 1. South Jersey is engaged in the transmission, distribution, transportation, and sale of natural and mixed gases within its defined service territory within the State of New Jersey.

Said service territory includes all or portions of the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem. Within its service territory, South Jersey services approximately 360,000 customers in 114 municipalities.

2. RC Cape May Holdings, LLC (“RC Cape May”) is an affiliate of Rockland Capital, a Delaware limited liability company, whose principal office is at 24 Waterway Avenue, Suite 800, The Woodlands, Texas 77380.

3. RC Cape May is the owner of the B. L. England electrical generation facility located in the Beesley’s Point section of Upper Township on the Great Egg Harbor Bay (the “Facility”).

II. REPOWERING THE FACILITY

4. The Facility is a 447-megawatt electricity generation facility. The Facility is powered by two 1960s-era coal units (155 MW and 129 MW), one 1970s-era residual oil unit (155 MW) and four 2 MW diesel generators. RC Cape May acquired the Facility in early 2007 from Atlantic City Electric Company (“ACE”). The Facility currently operates as a merchant power plant which sells electricity and capacity in the PJM Power market.

5. By virtue of an Administrative Consent Order (“ACO”), and a series of amendments to the ACO, with the New Jersey Department of Environmental Protection (“DEP”), regarding the Facility, RC Cape May is required to either repower the Facility with natural gas or shut-down the Facility permanently.

6. After deciding to redevelop the Facility as a natural gas-fired plant, RC Cape May and DEP executed an amendment to the ACO in 2012. The 2012 ACO set deadlines of 2013

and 2015 for cessation of coal operations at the Facility's two units, and identified natural gas repowering as the chosen alternative fuel for the Facility.

7. In June 2012, RC Cape May launched a full-scale redevelopment plan for the Facility, with 2013 as the target date for financial close and start of construction, and early 2016 as the date for commencement of commercial operations.

8. There are two coal-fired steam boilers at the Facility. RC Cape May's plan is to retire both coal fired steam boilers for Units 1 and 2 and replace them with a new state-of-the-art combustion turbine and Heat Recovery Steam Generator ("HRSG"). RC Cape May will retire the steam turbine for Unit 1, refurbish the steam turbine for Unit 2 and connect it to the new combustion turbine and HRSG, creating a single, large generating unit which will generate 403 MWs of power under summer peak-load conditions (430 MW in the winter). RC Cape May also intends to refuel and refurbish Unit 3 to operate on natural-gas at a capacity of approximately 160 MW.

9. Repowering the Facility to natural gas will provide significant benefits to the State of New Jersey. They include:

- The Facility is located in a critical reliability area as it is the only significant generator in southeast New Jersey.
- There is a severe need for capacity in the area of the Facility. This need will be exacerbated by the retirement of the Oyster Creek Nuclear Generating Facility in 2018.
- The Facility is strategically located to provide the necessary support for the development of offshore wind as a renewable resource, and this is consistent with New Jersey's energy plans.

10. In addition, there are numerous environmental benefits associated with repowering the Facility, including the following:

- A significant reduction in greenhouse gases, and power plant air pollutants, including nitrogen oxides (NO_x) and sulfur dioxide (SO₂), while at the same time increasing power generation by 30%;
- A significant reduction in surface water withdrawals from the Great Egg Harbor Bay because the Facility will no longer require once-through cooling; and
- The elimination of coal deliveries and other potentially hazardous materials associated with operating a coal plant such as materials required to run air pollution control technology that no longer will be required for a gas-fired power plant.

Other significant environmental benefits are too numerous to list in this petition. A description of additional environmental benefits is included in the proposed MOA, attached hereto as Exhibit A.

11. In addition, repowering the Facility advances many of the goals of New Jersey's 2011 Energy Master Plan ("EMP"). The Christie Administration's EMP, calls for the construction of new, clean-burning natural gas, in-state electricity generation. *See* EMP dated December 6, 2011.

12. In order to achieve these goals, the EMP directs State agencies to work toward the expansion of existing natural gas pipeline to support new, gas-fired electricity generation throughout the State, but particularly in southern New Jersey, which lacks adequate natural gas infrastructure to support such new generation facilities. *See* EMP at p. 85.

13. The EMP further directs that it is the policy of the State of New Jersey to discourage the construction of new coal-fired power plants, and to accelerate the decommissioning of coal fired power plants in this State. *See* EMP at p. 70. Converting the

Facility from a coal-fired and oil-fired electricity generator to a natural gas-fired generator advances, and is consistent with, this public policy goal.

14. Finally, Hurricane Sandy demonstrated the critical energy-security benefits of continued operation of the Facility. Hurricane Sandy devastated the northeastern portion of the United States, and most significantly the New Jersey shore. By virtue of its location, the Facility was in the center of the storm. Nevertheless, despite the location and age of Facility, it continued operating throughout Hurricane Sandy, and provided localized power to the regional grid. The Facility did not suffer any severe damage or flooding.

III. A NEW PIPELINE IS REQUIRED TO REPOWER THE FACILITY

15. South Jersey does not have transmission capacity to provide the natural gas needed to power the Facility today. The Facility will be South Jersey's single largest customer. By way of comparison, the annual gas load at the Facility will be more than that of 210,000 residential customers.

16. South Jersey has proposed to construct a new twenty-four inch natural gas high pressure transmission pipeline to: (1) provide gas transportation service to the Facility to enable its conversion from a coal and oil burning electrical generation power plant to one that burns natural gas; and (2) through a new interconnect with the South Jersey system, to provide system reliability and reinforcement enhancements for its customers served in the south and eastern portions of its service area (specifically Cape May and Atlantic Counties).

IV. A PORTION OF THE PIPELINE ROUTE TRAVERSES THE PINELANDS; AN MOA IS REQUIRED TO ALLOW THE PROJECT TO PROCEED

17. The Facility, which is located within the service territory of South Jersey and the boundaries of the Pinelands National Reserve, is outside of the state-designated Pinelands Area.

18. The Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, *N.J.S.A. 13:18A-1, et seq.*, and charged with the implementation of the Act and the Pinelands Comprehensive Management Plan (the "CMP"), *N.J.A.C. 7:50*.

19. Following a detailed alternatives analysis, which assessed environmental impacts, reliability, and other criteria, South Jersey determined that the optimal route for the Pipeline required that a 15-mile stretch of the Pipeline traverse state-designated Pinelands Area. Eleven (11) miles of the Project will traverse Pinelands Forest and four (4) miles will traverse the Pinelands Rural Development Area and/or the Pinelands Village of Tuckahoe.

20. The Pipeline is defined as public service infrastructure by the CMP, and therefore the four (4) miles of Pipeline traversing the Pinelands Rural Development Area/Pinelands Village of Tuckahoe is a permitted land use under the CMP. However, the Commission has determined that the eleven (11) mile stretch of the Pipeline traversing the Forest Management Area, is not fully consistent with the requirements of the Pinelands CMP because the project will not primarily serve the needs of the Pinelands exclusively, a requirement of the CMP for public service infrastructure in the Forest Management Area.

21. The CMP (*N.J.A.C. 7:50-4.52(c)2*) authorizes the Commission to enter into intergovernmental memoranda with any agency of the Federal, State or local government authorizing specified development activities that may not be fully consistent with the provisions of the CMP.

22. Through this Petition, Petitioners respectfully request that the Board authorize such an agreement for the Pipeline. A draft of a proposed MOA was submitted to the Commission for review on March 4, 2013 and is attached hereto as Exhibit A. Petitioners anticipate the MOA to be revised pursuant to comments from the Commission and Board Staff.

23. The Board has entered into a similar MOA's with the Commission in the past to facilitate the provision of safe and reliable utility services to New Jersey citizens.

24. The Pipeline, and therefore the repowering of the Facility, cannot move forward without such an MOA between the Board and the Commission.

V. PETITIONERS WILL PROTECT PINELAND RESOURCES

25. In addition to an agreement between the Commission and another agency, any proposed development that is not fully consistent with the standards of the CMP must be accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards.

26. The repowering of the Facility, and its required Pipeline, will provide such protection of the Pinelands Resources. South Jersey has chosen a route which will minimize disturbance of protected areas and will commit to a reasonable contribution to the Pinelands

Commission to protect, preserve and enhance the unique resources of the Pinelands Area. The repowering of the Facility itself will address two Pinelands priorities, reducing air emissions and enhancing water quality.

27. With the exception of two isolation block valve sites to be constructed adjacent to the roadway, the proposed Pipeline will be constructed beneath existing paved portions and/or disturbed shoulders of NJ Route 49, Cedar Avenue, Mill Road (CR 557), Reading Avenue CR 557) Mt. Pleasant-Tuckahoe Road (CR 664), Marshall Avenue (CR 669), and NJ Route 50 within the Pinelands.

28. Because the construction of the proposed Project would be primarily within previously filled and/or maintained ROW, potential impacts to wetland and environmentally sensitive areas will be minimal. Additionally, because of the use of public ROW for the proposed pipeline route, clearing of forest areas has been minimized.

29. Moreover, provisions are included in the proposed MOA to minimize the impact of the proposed development on wetlands and threatened or endangered flora or fauna. Such provisions will also minimize the impact upon and ensure proper treatment of historic cultural resources of significance to the Pinelands. Advanced trenchless construction technology will be utilized for stream crossings to minimize environmental impacts.

30. South Jersey will also contribute reasonable funds to the Pinelands Commission to further the Pinelands protection program, and ensure a greater level of protection for the unique resources of the Pinelands Area.

31. The contribution will provide a source of funds that will be used by the Pinelands Commission for activities that advance the protection of the Pinelands Area and that have a direct nexus to the preservation of the resources of the Area. Such activities could include: 1) the acquisition of land or interests therein, 2) environmental improvement measures (such as the retrofitting of stormwater facilities), 3) smart growth initiatives that advance conservation objectives within Pinelands development areas, particularly those that address Regional Growth Areas, and 4) research, planning and conservation projects designed to improve Pinelands protection practices.

32. Repowering of the Facility, along with construction of the necessary Pipeline, will yield substantial reductions in air emissions, which is a recognized need of the Pinelands.

33. The Department of Environmental Protection first identified this need in its 1980 Air Quality Assessment of the New Jersey Pinelands, which specifically identified the Facility as a source of air pollution within the Pinelands. Part IX of the CMP, dedicated to "Air Quality," documents that enhancement of the air quality is a clear need of the Pinelands.

34. Furthermore, the Commission also has recognized the need to promote less polluting forms of energy production within the Pinelands in its 2011 solar energy amendments to the CMP, which acknowledge the societal benefit of reducing the emission of air pollutants associated with fossil fuel based electricity production.

35. Natural gas produces less than ten percent (10%) of the criteria air pollutants and hazardous air pollutants produced by coal. Converting the Facility to natural gas will dramatically reduce a host of air pollutants, including SO₂ which produces acid rain, NO_x

which produce smog, carbon dioxide (CO₂) which contributes to climate change and mercury which bioaccumulates in Pinelands fish and wildlife.

36. The Facility repowering, along with the necessary pipeline, will also substantially reduce the current Facility impacts on water quality in the Pinelands, thus providing additional environmental benefits, and minimizing the environmental impacts of the Project.

37. The enhancement of water quality in the Pinelands is also a Commission priority, as set forth in Part VIII of the CMP, which is dedicated to "Water Quality."

38. Currently, the Facility withdraws substantial amounts of water each day from the Great Egg Harbor estuary to use as cooling water. The Facility also discharges pollutants to the Great Egg Harbor estuary, pursuant to a permit, through several outfalls. The repowering of the Facility will reduce water withdrawals and water pollution discharges by approximately forty-four percent (44%), respectively.

39. Additionally, the repowering project will eliminate the coal pile and its associated stormwater runoff, along with the use of lime, gypsum, slag and sorbent, all of which can be harmful to aquatic life.

40. Therefore, construction of the Pipeline will afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards.

VI. REQUEST FOR RELIEF

41. The draft MOA has been submitted to the Commission, but is not yet final.

42. South Jersey assumes that representatives of the Board will want to discuss the draft MOA with representatives of the Commission and with South Jersey.

43. South Jersey requests that the Board issue an order directing and authorizing the Board Secretary to sign the MOA when it is in final form.

VII. CONCLUSION

WHEREFORE, the Petitioners respectfully request that the Board issue an Order approving the MOA in final form between the Board and the Commission, and direct and authorize the Secretary of the Board to execute the final MOA.

Respectfully submitted,

COZEN O'CONNOR
Attorneys for Petitioner
SOUTH JERSEY GAS COMPANY

By: 
Ira G. Megdal, Esq.

Dated: April 17, 2013

Communications addressed to the Petitioner in this case should be sent to:

COZEN AND O'CONNOR
Attn: Ira G. Megdal, Esquire
457 Haddonfield Road
Suite 300
Cherry Hill, NJ 08002
(856) 910-5007
imegdal@cozen.com

VERIFICATION

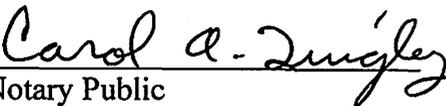
I, Charles F. Diplo, of full age, being duly sworn according to law, upon my oath, depose and say:

1. I am Senior Vice President of Engineering Services and System Integrity and am authorized to make this verification on behalf of South Jersey Gas Company.

2. I have reviewed the within Petition and the information contained therein, as it pertains to the Company, is true according to the best of my knowledge, information and belief.



Sworn to and subscribed
before me this 15th day
of April, 2013.



Notary Public

CAROL A. QUIGLEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 12/10/2014

Exhibit "A"

MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW JERSEY PINELANDS COMMISSION AND THE NEW JERSEY
BOARD OF PUBLIC UTILITIES

I. PURPOSE

This Memorandum of Agreement ("MOA") is entered into between the New Jersey Pinelands Commission (the "Commission") and the New Jersey Board of Public Utilities (the "BPU"). The Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq., and charged with the implementation of the Act and the Pinelands "Comprehensive Management Plan" (the "CMP"), N.J.A.C. 7:50. The Commission is also the planning entity authorized under Section 502 of the National Parks and Recreation Act of 1978. The BPU is an independent political subdivision of the State of New Jersey charged with general supervision of and jurisdiction over New Jersey public utilities including the functions, powers and duties assigned to it pursuant to N.J.S.A. 48:2-1 et seq. and 52:18A-2.1 and is allocated in, but not part of, the Department of Treasury pursuant to Reorganization Plan No. 001-1994.

In order to comply with air quality standards, the New Jersey Department of Environmental Protection ("NJDEP") ordered the B.L. England electrical generation plant at Beesleys Point, Upper Township, Cape May County ("the Facility"), either to cease operations or to repower its existing coal-and oil-fired boilers with natural gas combustion turbine technology to dramatically reduce air pollution from the Facility. The Facility, which is located within the service territory of the South Jersey Gas ("SJG") and the boundaries of the Pinelands National Reserve, is outside of the state-designated Pinelands Area. The only feasible means for SJG to supply natural gas to the Facility is to construct a natural gas pipeline to the Facility (the "Project"). Following a detailed alternatives analysis, which assessed environmental impacts, reliability, and other criteria, SJG determined that the optimal route for the pipeline required the construction of a 22-mile pipeline, 15 miles of which will traverse state-designated Pinelands Area beneath existing paved portions and/or disturbed shoulders of Union Road (CR 671), NJ Route 49, Cedar Avenue, Mill Road (CR 557), NJ Route 50, Mt. Pleasant-Tuckahoe Road (CR 664) and New York Avenue.

According to the PJM Interconnection 2011 Regional Transmission Expansion Plan (RTEP), which annually assesses transmission facilities in New Jersey for compliance with NERC reliability criteria violations, a number of factors continue to impact reliability in New Jersey. PJM 2011 *Regional Transmission Expansion Plan*, Book 5, Section 8, p. 143-144. Load growth, power exports to New York City and Long Island, deactivation/retirement of generation resources, sluggish development of new generating facilities, and continued reliance on transmission to meet load deliverability requirements all contribute to existing reliability criteria violations in New Jersey. *Id.* There is a critical need to expand natural gas electric generation within New Jersey, particularly with the impending retirement of the Oyster Creek Nuclear Generation Facility and with ongoing reliability criteria violations in the coastal area. See 2011 *New Jersey Energy Master Plan ("EMP")* at 76; *Long-Term Capacity Payment Agreement Pilot Program to Promote Construction of Qualified Electric Generation Facilities*, P.L. 2011, c.9 (legislative finding that New Jersey is experiencing an electric power capacity deficit and high

power prices that may result in the loss of jobs and investment due to the necessity for the upgrade of the transmission system to the west of New Jersey to ensure a reliable supply of electricity and capacity from generators located outside of New Jersey and as a result of a lack of new, efficient electric generation facilities, New Jersey has become more reliant on out-of-state coal-fired power plants). Following the retirement of the Oyster Creek facility in 2019, the BL England Facility will be the only remaining baseload electrical generation plant along the New Jersey coast. Absent construction of the Project, the NJDEP consent order requires the Facility to shut-down, an outcome that most certainly will require the construction of new electrical transmission lines to the New Jersey coast.

There also is a critical need to improve the reliability of natural gas service to eastern and southern portions of SJG's service territory. SJG serves approximately 61,000 natural gas customers in Cape May County via an existing 16-inch feeder line that is vulnerable to a single-contingency failure. A significant portion of SJG's system also is vulnerable to a single contingency failure of SJG's existing 20-inch pipeline from Union Road Station to Estell Manor Station, the primary major feeder line to the eastern and southern parts of the SJG service territory. Under design day conditions (2 degrees F), up to 142,000 customers located east and south of the Union Road Station could be vulnerable to a gas outage if this pipeline is interrupted. SJG reliability modeling shows that if this line were disrupted at even 30 degrees F, approximately 61,000 customers initially would lose gas service, with the number quickly growing to 120,000 customers when supply from SJG's McKee City LNG facility is exhausted. The construction of the Project will enhance greatly the reliability of the eastern and southern portions of SJG's service territory by enabling an alternative route for gas to be supplied to the coastal areas of Atlantic and Cape May County, which no longer would be subject to a single contingency. The Project also will improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby reducing the need for reinforcement pipe installations in the future, many of which would have to be located within the Pinelands Area.

The proposed gas main is defined as public service infrastructure by the CMP and is a permitted land use in a Pinelands Village and a Rural Development Management Area. In a Forest Management Area, the CMP permits public service infrastructure intended to primarily serve only the needs of the Pinelands. The Commission has determined that construction of the Project is not fully consistent with the requirements of the Pinelands CMP because the Project is not intended to primarily serve only the needs of the Pinelands. This MOA is intended to authorize the construction of the Project within the Pinelands Area in accordance with N.J.A.C. 7:50-4.52(c)2 and to establish alternative application procedures in accordance with N.J.A.C. 7:50-4.52(c)1.

II. BACKGROUND

A. The Proposed Route

The Project is a fifteen (15) mile, twenty-four (24)-inch natural gas pipeline originating at the intersection of Union Road and NJ Route 49 in Maurice River Township, Cumberland County and terminating at the eastern boundary of the state-designated Pinelands Area at the Cape May National Wildlife Refuge along Tuckahoe Road in Cape May County. A seven (7) mile segment of the pipeline is located outside state-designated Pinelands Area (but within the federally-

designated Pinelands National Reserve) and therefore is not considered part of the Project for purposes of this MOA. Eleven (11) miles of the Project will traverse Pinelands Forest and four (4) miles will traverse the Pinelands Rural Development Area and/or the Pinelands Village of Tuckahoe. The entire 15-mile segment within state-designated Pinelands Area will be constructed within existing road rights-of-way ("ROW") beneath the existing paved portions and/or disturbed shoulder of Union Road (CR 671), NJ Route 49, Cedar Avenue, Mill Road (CR 557), NJ Route 50, Mt. Pleasant-Tuckahoe Road (CR 664) and New York Avenue.

B. Unique Components of the Project

The proposed Project and repowering of the Facility is unique for the following four reasons.

1. Reliable Electrical Supply

First, the Project is being proposed to address the critical need for ensuring a reliable electricity supply in both the Pinelands Area and in the coastal portions of Atlantic and Cape May Counties. The conversion of the Facility to natural gas will enable the Facility to continue supplying reliable electricity to Pinelands residents and businesses. The repowered Facility will provide a majority of its electrical output over its useful life to load within the Pinelands. According to the EMP, there is a critical need to promote a diverse portfolio of new, clean, cost-effective in-state electric generation, and thereby to secure a reliable supply of cost-effective energy and capacity, and to avoid transmission projects that import power from out-of-state generation sources far away from the State's loads. According to PJM's *2011 Regional Transmission Expansion Plan*, New Jersey is experiencing reliability criteria violations due to load growth, power exports to New York City and Long Island, deactivation/retirement of generation resources, sluggish development of new generating facilities, and continued reliance on transmission to meet load deliverability requirements and to obtain access to more economical sources of power west of the Delaware River. The impending retirement of the Oyster Creek Nuclear Generation Facility in 2019 will pose significant challenges to electric reliability within New Jersey and particularly within the coastal region. The BL England Facility will be the only remaining baseload electrical generation plant along the New Jersey coast between Cape May and Atlantic County. If the Project is not constructed, the NJDEP Order requires that the Facility be shut-down, an outcome that may necessitate the construction of new electrical transmission lines to the New Jersey coast through the Pinelands Area.

2. Reliable Gas Supply

Second, the Project will significantly improve the reliability of natural gas service to eastern and southern portions of SJG service territory, which serves 142,000 customers who currently are vulnerable to a significant disruption in service. SJG serves approximately 61,000 natural gas customers in southern Cape May County via a single 16-inch, 250 psig feeder line. Approximately 142,000 customers located east and south of the Union Road depend upon a single 20-inch pipeline from Union Road Station to Estell Manor Station. This 20-inch line is the primary major feeder line to the eastern and southern parts of the SJG service territory. Virtually all of SJG's customers located east and south of the Union Road Station are vulnerable to a gas outage if this 20-inch pipeline is interrupted during winter heating months. The Project will enhance the reliability of SJG's eastern and southern portions of its service territory

especially if an outage were to occur on the 20-inch line just east of Union Road Station, or on the 16-inch line between Cape May Station and the Reliability Interconnection. Finally, the Project will improve gas supply availability and pressures to feed these areas on peak and near-peak days, thereby reducing SJG's future need for reinforcement pipe installations.

3. Environmental Improvement

Third, the repowering of the Facility with natural gas not only will satisfy a public need for electricity and reliable natural gas service in the Pinelands, but presents a unique opportunity to dramatically reduce air and water pollution burdens on the Pinelands. The elimination of the storage and combustion of coal at the Facility will dramatically reduce the quantity of air pollution released to the Pinelands environment. In fact, the Facility specifically was identified as a major contributor of air pollution to the Pinelands in the *1980 Air Quality Assessment of the New Jersey Pinelands*. Also, the quantity of water needed to operate the repowered facility will be substantially reduced and the environmental risks posed by the need to transport coal and oil through the Pinelands to the Facility would cease.

4. Economic Benefits

Fourth, the proposed Project and Facility repowering will provide several direct economic benefits to the Pinelands. Because the Facility itself is located within the Pinelands National Reserve, the continued operation of the repowered Facility will enable the survival of a Pinelands employer. The *EMP* acknowledges that the construction of in-state generation brings economic development, jobs, and property taxes to New Jersey, unlike out-of-state generation. Furthermore, the repowering project will enable Upper Township, a Pinelands municipality, to continue receiving millions of dollars in property tax and host fee revenue, upon which the Township depends to fund essential services. These direct economic benefits to the Pinelands and to New Jersey will be sustained only through the repowering and continued operation of the Facility, along with the necessary pipeline Project.

Public Need for the Proposed Project

As discussed above, the *EMP* expresses a firm State goal of promoting a diverse portfolio of new, clean, cost-effective in-state electric generation to ensure a reliable supply of energy and capacity at reasonable rates while advocating for policies that help control electricity costs, maintain system reliability, and adhere to environmental objectives. The Project and the repowering of the Facility directly serves these goals. The *EMP* specifically acknowledges the challenge of finding baseload generation to replace Oyster Creek and targets the expansion of natural gas-fired power generation as a less carbon-intensive fossil fuel that also comes with significant air quality benefits, including reduced emissions of sulfur dioxide, fine particulates, volatile organic compounds, and greenhouse gases. To further this goal, the *EMP* directs State agencies to accelerate the decommissioning of older, less efficient coal- and oil-fired electrical generation plants and to rely more upon natural gas for electricity generation, and to promote the expansion of pipelines to supply natural gas. The repowered Facility will supply the majority of its electricity to the Pinelands Area and will provide reliable baseload power generation. The continued operation of the Facility is critical to ensuring adequate electric supply to the New Jersey coastal areas and helps the State directly to achieve the goals of the *EMP*.

The extension of the natural gas pipeline to the Facility also will improve the reliability of natural gas service to eastern portions of Atlantic County and to Cape May County. Currently, Cape May County only has one feeder line for 65,000 customers. This additional benefit of the Project will correct this service vulnerability by providing redundant natural gas service.

D. Basis for the MOA

The Pinelands CMP (N.J.A.C. 7:50-4.52(c)2) authorizes the Commission to enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes a specified development activities that may not be fully consistent with the provisions of the CMP, specifically the land use and environmental standards set forth at N.J.A.C. 7:50-5 and 6. The agency must demonstrate, and the Commission must find, that any proposed development that is not fully consistent with the standards of the CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards.

As part of this MOA, the BPU is agreeing that the public utility proposing to construct the proposed natural gas pipeline project will undertake certain measures that will afford, at a minimum, equivalent levels of protection to the resources of the Pinelands.

1. Contribution to Pinelands Protection

Pursuant to a subsequent Order issued by the BPU and an MOA between the BPU and the public utility proposing to construct the proposed Project, the public utility shall contribute _____ (\$____) dollars to the Pinelands Commission to further the Pinelands protection program and ensure a greater level of protection for the unique resources of the Pinelands Area. This amount was determined by the Pinelands Commission based upon the nature of the regulatory deviations. These funds will be utilized by the Pinelands Commission to protect, preserve and enhance the unique resources of the Pinelands Area. The payment would provide a source of funds that would be used by the Pinelands Commission for activities that advance the protection of the Pinelands Area and that have a direct nexus to the preservation of the resources of the Area. Such activities could include: 1) the acquisition of land or interests therein, 2) environmental improvement measures (such as the retrofitting of stormwater facilities), 3) smart growth initiatives that advance conservation objectives within Pinelands development areas, particularly those that address Regional Growth Areas, and 4) research, planning and conservation projects designed to improve Pinelands protection practices.

2. Improved Air and Water Quality in the Pinelands Area

The Project will further the environmental needs of the Pinelands Area, by improving air and water quality which has long been negatively impacted by the Facility. Enhancement of the air quality is a clear need of the Pinelands, as set forth in Part IX of the CMP, which is dedicated to "Air Quality." The conversion of the Facility to natural gas will yield substantial reductions in air emissions, which long has been a need of the Pinelands. The NJDEP first identified this need in its 1980 *Air Quality Assessment of the New Jersey Pinelands*, which specifically identified the Facility as a source of air pollution within the Pinelands. Furthermore, the Commission also has recognized the need to promote less polluting forms of energy production within the Pinelands in

its 2011 solar energy amendments to the CMP, which acknowledge the societal benefit of reducing the emission of air pollutants associated with fossil fuel based electricity production. Natural gas produces less than ten (10) percent of the criteria air pollutants and hazardous air pollutants produced by coal. Converting the Facility to natural gas will dramatically reduce a host of air pollutants, including sulfur dioxide which produces acid rain, nitrogen oxides which produce smog, carbon dioxide which contributes to climate change, and mercury which bioaccumulates in Pinelands fish. The Project and repowering of the Facility will reduce air quality impacts on the Pinelands, thus providing a significant environmental benefit to the Pinelands Area and minimizing the impact of the Project.

The Facility repowering will also reduce water quality impacts on the Pinelands. The enhancement of water quality in the Pinelands is also a Commission priority, as set forth in Part VIII of the CMP, which is dedicated to "Water Quality." Currently, the Facility withdraws substantial amounts of water each day from the Great Egg Harbor estuary to use as cooling water. The Facility also discharges pollutants to the Great Egg Harbor estuary, pursuant to a permit, through several outfalls. The repowering of the Facility will reduce water withdrawals and water pollution discharges by approximately forty-four (44) percent, respectively. Additionally, the repowering project will eliminate the coal pile and its associated stormwater runoff, along with the use of lime, gypsum, slag and sorbent, all of which can be harmful to aquatic life. The Facility repowering, along with the necessary pipeline, will substantially reduce the current Facility impacts on water quality in the Pinelands, thus providing an environmental benefit and minimizing the environmental impacts of the Project.

3. Minimizing Impacts to Environmental, Historical and Cultural Resources

Because the construction of the proposed Project would be primarily within previously filled and/or maintained ROW, impacts to wetland areas will be minimal. Additionally, because of the use of ROW for the proposed pipeline route, no clearing of forest areas will be necessary. Moreover, provisions are included in this MOA to minimize the impact of the proposed development on wetlands and threatened or endangered flora or fauna. Such provisions will also minimize the impact upon and ensure proper treatment of historic resources of significance to the Pinelands. Additionally, advanced directional drilling technology will be utilized for stream crossings, to ensure minimal environmental impacts.

In accordance with N.J.A.C. 7:50-4.52(c)1, the Commission also may enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes specified development activities without securing individual development approvals from the Commission, provided that the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6. As discussed above, the BPU, as part of this MOA, has agreed that the public utility shall undertake measures that will afford an equivalent level of protection to the resources of the Pinelands. As a result, entry of an MOA authorizing alternative application procedures is warranted.

III. AGREEMENTS

A. The BPU agrees that:

1. It will issue an Order to the public utility proposing to construct the project delineated in Paragraph II.A above incorporating the requirements of Paragraphs III.A.1 through 8 of this MOA and the Environmental Conditions set forth in Attachment B.
2. It will require the public utility proposing to construct the project delineated in Paragraph II.A above to construct the project in accordance with the list of documents set forth in Attachment A attached hereto and made a part hereof.
3. It will require the public utility proposing to construct the project delineated in Paragraph II.A above to satisfy all of the obligations of this MOA and the Pinelands CMP, unless a deviation therefrom is expressly authorized by this agreement.
4. It will require the public utility proposing to construct the project delineated in Paragraph II.A above to obtain any and all certificates, licenses, consent, approvals or permits required from any local, State and/or Federal entity prior to commencing construction of the project. No part of this MOA is intended to release the public utility from its responsibility to obtain all other required local, State and/or Federal approvals.
5. It will require the public utility proposing to construct the project delineated in Paragraph II.A above to comply with all of the environmental conditions set forth in Attachment B, attached hereto and made a part hereof, and the terms of this agreement.
6. It will require the public utility proposing to construct the project delineated in Paragraph II.A above to provide notice to the Pinelands Commission staff seven (7) days prior to commencing any clearing or construction activities for the project.
7. Any significant deviation from or modification to the proposed project as delineated in Paragraph II.A above and the documents listed in Attachment A will require formal application to the Pinelands Commission in accordance with the Pinelands CMP and no clearing or construction activities regarding such deviation may occur until an application has been completed and the Pinelands Commission has approved the project.
8. It agrees that the public utility proposing to construct the project delineated in Paragraph II.A above shall contribute ____ (\$____) dollars to the Pinelands Commission to further the Pinelands protection program and ensure a greater level of protection for the unique resources of the Pinelands Area. These funds may be paid in installments over two years as follows:

- a. A payment of \$ _____ shall be paid to the Pinelands Commission, unless advised otherwise pursuant to Paragraph III.A.8.c. below, every six months for the two years following the effective date of this MOA;
- b. The first payment of \$ _____ shall be paid within sixty (60) days of the effective date of this MOA; and
- c. All payments shall be made to the Pinelands Commission unless the Commission notifies the public utility, in writing, fifteen (15) days prior to the due date of such installment payment that such installment payment or a portion thereof shall be made to another entity. The Pinelands Commission may, in its sole discretion, authorize the public utility to make an installment payment or portion thereof to a third-party of the Commission's choosing. The third-party shall utilize such funds as directed by the Pinelands Commission to protect, preserve and enhance the unique resources of the Pinelands Area.

B. The Pinelands Commission agrees that:

1. Based on its review of the documents listed in Attachment A, the provisions of the Pinelands CMP and the terms of this MOA, including the Environmental Conditions delineated in Attachment B, and with the exception of those standards for which a deviation is being granted pursuant to this MOA, the project as proposed is consistent with the minimum requirements of the Pinelands CMP. The proposed construction project is deemed approved and no further action by the Commission, or its staff, shall be required regarding the proposed construction project unless there is a deviation from or modification to the proposed project as discussed in Paragraph III.A.7 above.
2. This MOA shall constitute a conditional Certificate of Appropriateness pursuant to N.J.A.C. 7:50-6.156. Provided the public utility complies with the conditions contained within Attachment B that pertain to cultural/historic resources, no further action by the Commission or its staff shall be required unless there is a significant deviation from or modification to the proposed project as discussed in Paragraph III.A.7 above.
3. It agrees to use the _____ (\$ _____) dollar contribution made by the public utility in accordance with Paragraph III.A.8 above, to further the Pinelands protection program and ensure a greater level of protection for the unique resources of the Pinelands Area. Specifically, the contribution will provide a source of funds that would be used by the Pinelands Commission for activities that advance the protection of the Pinelands Area and that have a direct nexus to the preservation of the resources of the Area.

C. The Commission and the BPU agree:

1. To meet periodically to discuss this MOA, the status of the electric transmission line project and other issues of mutual concern.

IV. EFFECTIVE DATE AND DURATION

1. In accordance with N.J.S.A. 13:18A-5(h), this MOA shall take effect following the conclusion of the Governor's review period and/or approval of the Pinelands Commission meeting minutes authorizing entry of this MOA and then upon approval and signature by the authorized representative of both parties.
2. This MOA shall remain in effect for five (5) years from its effective date unless one of the following occurs:
 - i. It is amended by written consent of both parties; or
 - ii. Both parties mutually agree, in writing, to otherwise terminate this agreement.

SIGNATURES

NEW JERSEY PINELANDS COMMISSION

Date: _____

By: _____
_____, Executive Director

Approved as to form by:

Date: _____

By: _____
_____, Deputy Attorney General
State of New Jersey

NEW JERSEY BOARD OF PUBLIC UTILITIES

Date: _____

By: _____
_____, Executive Director

Approved as to form by:

Date: _____

By: _____
_____, Deputy Attorney General
State of New Jersey

ATTACHMENT B

Environmental Conditions

General Conditions

1. Any areas disturbed as a result of construction activities shall be graded to natural conditions and seeded with native Pinelands grass species.
2. Only native Pinelands species shall be used for revegetation purposes.
3. The use of herbicides for future vegetation management purposes shall be prohibited in any portion of the ROW.
4. All vegetation (timber, woodchips) removed during construction shall be lawfully disposed of unless the property owners adjacent to the ROW can promptly remove this debris for their personal use or the Executive Director approves the disposition of vegetative material on sites within the Pinelands Area prior to the disposition of any such material.
5. No construction debris or excess fill shall be disposed of in the Pinelands Area without the prior approval of the Pinelands Commission Executive Director.
6. No off-site storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials) for the project shall be located within the Pinelands Area unless approved by the Pinelands Commission Executive Director prior to their use.
7. The Pinelands Commission staff shall be permitted to inspect construction activities to ensure compliance with the conditions set forth in this agreement.
8. Any minor modifications to the construction plans located within the Pinelands Area shall be submitted to the Pinelands Commission Executive Director for review and approval prior to any construction commencing in such areas.

Cultural Resources

9. All recommendations set forth in the Cultural Resource Survey report shall be implemented.
10. In accordance with N.J.A.C. 7:50-6.158(b), if, at any time after construction of the project has commenced, archeological data is discovered on the project site, the public utility will immediately cease construction, notify the Pinelands Commission and take all reasonable steps to protect the archeological data.

Wetlands

11. No disposal of wood chips shall be permitted during construction nor shall any temporary stockpiling or placement of woodchips occur in wetlands or within 300 feet of wetlands.
12. Appropriate measures, such as installation of hay bales, shall be taken during construction to preclude sedimentation from entering wetlands.
13. When activities will occur in wetlands the construction contractor shall utilize palettes, mats, or other appropriate devices to prevent tire rutting by construction vehicles. Vegetation may be cut prior to placement of palettes or matting. These devices shall be removed promptly upon completion of the construction of the portion of the line necessitating the use of such tire rutting prevention devices.
14. Vegetation clearing in wetlands shall be accomplished by techniques developed to minimize impacts to the wetlands. Such techniques include but are not limited to hand clearing, low impact vehicles (i.e. balloon tired all-terrain vehicles) designed for mechanical clearing, and mechanical clearing with equipment placed on mats.
15. All cut vegetation shall be removed from wetlands and areas within 300 feet of wetlands.
16. Any wetlands disturbed as a result of construction activities shall be graded to natural conditions and seeded with native Pinelands grass species suitable for wetland areas.
17. No storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials for the project) shall be located within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to utilization of such areas.
18. No culverts or fill, with the exception of devices to prevent tire rutting discussed in Paragraph 14 above, may be placed or deposited into wetlands or areas within 300 feet of wetlands to create access roads, temporary or otherwise, for the construction of new pipeline.
19. No refueling shall occur within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to the initiation of any refueling activities.

Threatened or Endangered Species

20. At least one biologist qualified in the identification of threatened and endangered plants and animals and their habitats, as delineated at N.J.A.C. 7:50-6.27 and 6.33, shall be present at each site of the project where clearing and/or construction activities are being undertaken. 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 threatened and/or endangered species of animals or plants and that any such plants and animals discovered during construction are protected.

All clearing and/or construction activities shall be performed in accordance with the recommendations as to field measures, construction practices and/or time restrictions and protocols discussed in the report entitled, _____ shall be conducted according to the protocols set forth in such report. No clearing or construction activities may commence in any areas requiring additional survey work until such survey work is completed, the results of such work are submitted to the Pinelands Commission and accepted by the Executive Director and the public utility receives written confirmation of the Executive Director's acceptance of such results.

21. The Pinelands Commission shall be notified immediately if any threatened and/or endangered species of plants or animals or habitat critical to their survival, the report entitled, _____ are identified or discovered during construction. All clearing or construction activities in the vicinity of such species or critical habitat shall immediately cease pending direction from the Pinelands Commission Executive Director. During that time, the public utility shall authorize the biologists to take all reasonable steps to ensure that such species or critical habitats are protected.

DRAFT